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IN THE

## Supreme Court of the United States

October Term, 1983

HOOPA VALLEY TRIBE OF INDIANS.  
*Petitioner,*

v.

JESSIE SHORT, et al.,  
*Respondents.*

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PETITION FOR  
WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUITTHOMAS P. SCHLOSSER  
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## QUESTIONS PRESENTED FOR REVIEW

1. Was the lower court correct first, in ruling that Congress' directive in 25 U.S.C. § 407 that timber proceeds from unallotted reservation forests be used for "members of the tribe or tribes concerned" did *not* refer to the enrolled members of a federally-recognized tribe, but rather to anyone held to be "communally concerned", thus invalidating the Secretary of the Interior's construction of the statute governing harvest of timber on 50 million acres of land on some 90 Indian reservations; and second, in using that ruling as a predicate for Tucker Act jurisdiction and liability to persons not members of any tribe?
2. Was the lower court's construction of the term "tribe" in 25 U.S.C. § 407 to mean not a politically-defined tribal community but rather a racially defined class of "Indian" descendants who have left the reservation, abandoned tribal relations, and become assimilated into the general society, consistent with the Indian Commerce Clause and the Equal Protection requirements implicit in the Due Process Clause of the Fifth Amendment?
3. In *United States v. Mitchell (Mitchell II)*, \_\_ U.S. \_\_, 103 S. Ct. 2961, 2969 (1983), this Court held that an Indian statutory Tucker Act claim will be sustained if the statute "can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties [it] impose[s]." Did the lower court err in founding jurisdiction on 25 U.S.C. § 407 and a related funds statute, but imposing liability, not by examining § 407 to determine what duties it imposes, but rather by importing into that statute duties arising from the court's construction of a separate statute which does not meet the Tucker Act jurisdictional requirements of *Mitchell II*? Does such imposition of liability

deprive petitioner of due process of law by denying an opportunity to present evidence and argument as to whether any duty imposed by 25 U.S.C. § 407 has been breached?\*

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\* PARTIES TO THE PROCEEDINGS BELOW: Plaintiffs in the Claims Court (Respondents here) are Jessie Short and approximately 3,800 individuals whose names appear in Appendix I. 2,303 plaintiffs have been given summary judgment to date; the status of the remainder has yet to be determined. Defendant below is the United States of America, and Petitioner, the Hoopa Valley Tribe of Indians, is the Defendant-Intervenor in the Claims Court.

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#### Other Authority

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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT**

**DECISIONS BELOW**

Review is hereby sought of a decision of the United States Court of Appeals for the Federal Circuit reported at 719 F. 2d 1133; the court's opinion of October 6, 1983 is reproduced as Appendix A to this Petition. The Court of Claims' opinions on other issues in this case are reported at 486 F.2d 561 (1973), *cert. denied*, 416 U.S. 961 (1974) and 661 F.2d 150 (1981), *cert. denied*, 455 U.S. 1034 (1982). The earlier opinions appear as Appendices B and C to this Petition, App. 24, 40.

**JURISDICTION**

The decision of the Court of Appeals was entered on October 6, 1983. In No. A-466 on December 29, 1983, the Chief Justice extended the time for filing this Petition through March 4, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

**STATUTES AND REGULATIONS INVOLVED**

**1. Section 407 of Title 25, United States Code, provides:**

The timber on unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses pursuant to section 413 of this title, shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as he may direct.

**2. Section 163 of Title 25, United States Code, provides:**

The Secretary of the Interior is authorized, wherever in his discretion such action would be for the best interest of the Indians, to cause a final roll to be made of the membership of any Indian tribe; such rolls shall contain the ages and quantum of Indian blood, and when approved by the said Secretary are declared to constitute the legal membership of the respective tribes for the purpose of

segregating the tribal funds as provided in section 162 of this title, and shall be conclusive both as to ages and quantum of Indian blood . . .

3. Section 83.4 of Title 25, Code of Federal Regulations, provides:

Any Indian group in the continental United States which believes it should be acknowledged as an Indian tribe, and can satisfy the criteria in § 83.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

25 C.F.R. Part 83 - Procedures For Establishing That An American Indian Group Exists As A Tribe is reproduced in its entirety in Appendix D to this Petition, App. 152.

4. Part 111 of Title 25, Code of Federal Regulations, entitled Annuity And Other Per Capita Payments, is reproduced in Appendix E to this Petition, App. 164.

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**STATEMENT**

*Short v. United States* involves personal claims of individual plaintiffs that the United States is liable in money damages for the Department of the Interior's failure to distribute to them income from unallotted lands on the Hoopa Square, a 140 square-mile tract of land set apart as an Indian reservation by an 1876 Executive Order. The case was filed in the Court of Claims in 1963. The decision of the Court of Appeals for the Federal Circuit below responds to motions by co-defendants United States and the Hoopa Valley Tribe to dismiss *Short* as beyond the subject matter jurisdiction granted by the Tucker Act, 28 U.S.C. § 1491.

The setting for the motions to dismiss and the court's responses to them are highly unusual. The motions to dismiss were filed in 1983 based on this Court's holding in *United States v. Mitchell*, (*Mitchell I*), 445 U.S. 535 (1980). As the court noted, this inquiry raised issues "not before

articulated." App. 2. Prior to the motions to dismiss, all of the substantive rulings of the Court of Claims had been premised upon the Act of April 8, 1864, 13 Stat. 39, which authorized creation of four Indian reservations in California. App. 55. The Government and the Tribe argued in their motions to dismiss that the 1864 Act could not fairly be read as mandating compensation as required by *Mitchell I* and thereby failed to meet the jurisdictional prerequisite for Tucker Act claims "founded upon" an act of Congress.<sup>1</sup>

In the decision below, the Court of Appeals effectively conceded this jurisdictional defect, App. 6, 719 F.2d at 1136, but considered it "irrelevant" on the ground that a second statute, 25 U.S.C. § 407, which had never before been judicially mentioned in *Short*, sustained jurisdiction. *Id.* This § 407 governs administration of all tribal timber throughout the United States and authorizes the Secretary to utilize proceeds from timber sales on those lands "for the benefit of the Indians who are members of the tribe." Although the previous rulings of the Court of Claims had specified that *Short* plaintiffs presented individual, *not tribal* claims, based upon the 1864 Act, not § 407, the Court of Appeals held that plaintiffs were entitled to recover pursuant to 25 U.S.C. § 407 because the word "tribe" "meant only the general Indian groups communally concerned with the proceeds - not an officially organized or recognized Indian tribe." App. 7, 719 F.2d at 1136. Although the court substituted an entirely new and unrelated jurisdictional and substantive basis for recovery in *Short*, the court did not disclaim or reexamine the previous rulings based on the 1864 Act. Instead, it held that the previous rulings in *Short* were unaffected and remained binding on the United States and the Tribe as law of the case in interpreting § 407. App. 8, 719 F.2d at 1137.

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1. *United States v. Mitchell (Mitchell II)*, \_\_\_ U.S. \_\_\_, 103 S. Ct. 2961 (1983) was decided while the motions to dismiss were pending. Supplemental briefs were filed pointing out that notwithstanding the waiver of sovereign immunity found in the Tucker Act, *Mitchell II* still required that a statutory claim for damages against the United States be founded upon a statute that could fairly be read as mandating payment for the breach alleged.

*Short* was filed by 3,323 plaintiffs, later joined by over 500 intervenors, who alleged that the United States had erroneously excluded them from sharing trust income from unallotted lands on the Hoopa Square, a square tract set aside by an 1876 Executive Order as an Indian reservation pursuant to the 1864 Act.

Twenty-five miles down the Klamath River from the Square lies the Klamath River Reservation. Many of the 3,800 plaintiffs are descendants of Indians allotted parcels of land there in 1893-98. The Klamath River Reservation had been set aside by an 1855 Executive Order for the benefit of the Klamath River Indians, predominantly Yuroks. In the 1880's, however, a non-Indian challenged the existence of the Klamath River Reservation because it exceeded the four-reservation limitation in the 1864 Act. President Harrison responded by issuing an Executive Order in 1891 which annexed the Klamath River Reservation and other lands to the Hoopa Square. Together, these tracts are now usually referred to as the "Hoopa Valley Reservation."

Commencing in the 1950's, the Secretary of the Interior began to sell timber from the unallotted lands on the Square as authorized by 25 U.S.C. § 407. Pursuant to long-standing Department practice that only federally-recognized tribes and their members were eligible for § 407 timber revenues, and pursuant to a solicitor's opinion concluding that the Square remained set aside for Hoopa tribal members alone, the proceeds of these sales were made available exclusively to those enrolled by the Tribe. The Hoopa Valley Tribe was then and is now the only organized tribe on any portion of the Hoopa Valley Reservation.<sup>2</sup>

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2. The Yurok Tribe is a nearby federally-recognized tribe but is not formally organized and its membership is undefined. 48 Fed. Reg. 56865 (Dec. 23, 1983). Only a few of the *Short* plaintiffs are involved in Yurok tribal affairs, and most are antagonistic to attempts to organize it. No tribe is a claimant in *Short*. Unlike the Yuroks, the Hoopas of the Square organized a tribal government and adopted a constitution, some 20 years before the Secretary began timber revenue distributions.

The *Short* plaintiffs argued that the 1864 Act gave them the same rights to the timber proceeds as the members of the Hoopa Valley Tribe. They sought a money judgment for the value of their share of income from the Hoopa Square. This contention was sustained by a Commissioner of the Court of Claims in 1972. In a *per curiam* opinion, the Court of Claims upheld its Commissioner in 1973, ruling that the four-reservation limitation in the 1864 Act prevented acquisition of any vested rights in the Square, and that all individual Indians of the combined reservations thereby received equal rights in revenues from all the Reservation, both the Square and the 1891 Addition. See Appendix C. Plaintiffs did not assert any claim under 25 U.S.C. § 407, the statute regulating timber sales on unallotted Indian lands, so § 407 was not briefed or considered by the court. The Tribe and the Government filed petitions for certiorari but these were denied. 416 U.S. 961 (1974).

While further proceedings were under way concerning which plaintiffs were entitled to recover, the United States attempted to organize the Yurok Tribe on the Addition but the *Short* plaintiffs successfully blocked that attempt in *Beaver v. Sec'y of the Interior*, Civ. No. 79-2925-SW (N.D. Cal., Feb. 11, 1980). Plaintiffs continued to insist that their timber claims were based on individual, not tribal, rights to revenue. In 1981, the Court of Claims sitting *en banc*, in another appeal, followed the 1973 opinion and reaffirmed, as law of the case, the claimed rights based on the 1864 Act. App. 30-32, 661 F.2d at 152. Defendants again unsuccessfully petitioned for certiorari, 455 U.S. 1034 (1982).

In 1982, the Hoopa Valley Tribe retained new counsel in the *Short* litigation and in its spinoff, *Puzz v. Department of the Interior*, N.D. Calif. Civ. No. C-80-2908 TEH. (*Puzz* is a district court case brought by five of the *Short* plaintiffs seeking a declaratory judgment that the Hoopa Valley Tribe no longer has legitimate existence and an injunction to prevent the United States from dealing with the Tribe as the governing body of the Square. The *Puzz* plaintiffs argue this result is compelled by *Short*, which, they assert, should be given collateral estoppel effect in *Puzz*.)

In 1982, all parties filed requests for review by the Court of Claims of additional lower court decisions on individual entitlement of some 3,300 plaintiffs to recover. These appeals were transferred to the Court of Appeals for the Federal Circuit. At this point, while attempting to defend against the dismantlement of the Tribe because of the asserted collateral estoppel effect of *Short*, the Tribe and the Government became convinced that under *Mitchell I* the Court of Claims did not then and never did have jurisdiction of damage claims in *Short*. This Court had held the Court of Claims lacked Tucker Act jurisdiction over claims based on a statute unless the statute created a substantive right to money damages. The 1864 Act, the only statute theretofore relied upon by the Court of Claims in *Short*, did not meet this test since no statutory authority existed in 1864 for the United States to sell tribal timber, and the 1864 Act could not "fairly be read as mandating payment of money damages" for allegedly erroneous timber sales. See *Mitchell I*, 445 U.S. 535, 545 (1980). Its simple authorization for setting aside four reservations in California could not create actionable rights to timber revenues. The Tribe and the United States therefore moved to dismiss.<sup>3</sup>

At oral argument on the motions to dismiss plaintiffs first asserted that 25 U.S.C. § 407 was a basis for their claim. The Government and the Tribe pointedly responded that § 407 only authorized payments to "tribes" or "members of tribes," and that plaintiffs, who presented only individuals' claims, were neither. But the Court of Appeals for the Federal Circuit, recognizing that the 1864 Act could not meet the *Mitchell I/Mitchell II* test, disclaimed reliance on the 1864

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3. The United States' motion to dismiss also noted a possible defect in the Court of Appeals' appellate jurisdiction in light of the gloss placed upon the Federal Court Improvement Act of 1982 by *Aleut Tribe v. United States*, 702 F.2d 1015 (Fed. Cir. 1983). *Aleut* held that where a Claims Court judgment did not dispose of all claims and did not certify the case for interlocutory appeal, the court lacked appellate jurisdiction under 28 U.S.C. § 1292. For whatever reason, the Court of Appeals did not address the appellate jurisdiction issue here.

statute and held that jurisdiction was now founded on § 407. App. 6; 719 F.2d at 1136. Despite the new jurisdictional basis for recovery, it held that its earlier rulings based on the disclaimed 1864 Act were law of the case. App. 7-8; 719 F.2d at 1136-37.

This petition primarily concerns the lower court's misreading of 25 U.S.C. § 407, and the practical and constitutional implications of that ruling for tribes throughout the Nation.

### **REASONS FOR GRANTING THE WRIT**

#### **I. The Lower Court's Interpretation Of "Tribe" In The Federal Tribal Timber Statute To Mean "Communally-Concerned" Individual Indians Rather Than The Organized And Federally-Recognized Tribe Presents An Issue Of Substantial Importance To The Administration Of Indian Property Throughout The Nation.**

25 U.S.C. § 407 and the regulations promulgated under it govern timber management on every Indian reservation in the country with unallotted land. Its mandate, that the beneficiaries of unallotted timber lands are the "members of the tribe or tribes concerned," has been rigorously followed by the Secretary of the Interior with respect to the Hoopa Valley Reservation and other reservations: the Secretary has consistently construed § 407 to benefit only federally-recognized tribes and those persons determined by the tribes to be their members. The Court of Appeals' unprecedented ruling that any Indian, regardless of lack of tribal membership, should share in these revenues if he can be said to be "communally concerned" with the funds does substantial violence to that important statute, its legislative history, and to the Government's administrative practice. The mischief which may flow from this serious misconstruction of § 407 is enormous:

- It introduces grave uncertainty to the process of Secretarial distribution of unallotted timber income.

- It invites claims against the United States Treasury for past distributions of income on reservations around the United States.
- It invites litigation against the Secretary and tribes challenging use of income from tribal lands which are proposed to benefit the tribe and its members.
- It threatens the financial stability of tribal governments whose reservations may be subject to such claims and opens the door to substantial erosion of the income base of reservation populations.
- It creates a new class of "Indians" -- non-members of tribes who are "communally concerned" with income from unallotted lands.
- It threatens tribal management authority over reservation timber and calls into question the entire body of Secretarial regulations which recognize tribal representatives as the appropriate source of authority for decisions concerning timber harvesting on unallotted reservation lands.

25 U.S.C. § 407 governs Bureau of Indian Affairs' commercial timber operations on approximately 90 Indian reservations which have forested "unallotted" land, *i.e.*, land not divided in severalty among individuals. App. 168. Over 50 million acres of reservation land is held in unallotted status throughout the United States. F. Cohen, *Handbook of Federal Indian Law* at 471 (1982 ed.). In the most recent six-year period for which data are available, fiscal years 1977 through 1982, the Bureau of Indian Affairs authorized harvest of \$411.2 million worth of tribal timber under the authority of the statute, an average of about \$70 million per year. App. 167.

The Bureau of Indian Affairs has consistently construed § 407 to mean that unallotted timber funds are collected for the use of federally-recognized Indian tribal governments and their enrolled members, a construction correct not only because of its consistency with the seminal principle of the political relationship between the United States and Indians

*qua tribes*, see Section II, *infra*, but also because it is conclusively supported by legislative history and caselaw.<sup>4</sup> Because of the Bureau of Indian Affairs' long-standing view that federally-recognized Indian tribes are the only beneficiaries of § 407 timber sales, the lower court's ruling that Congress meant something other than these tribes in this statute now calls into question the Secretary's handling of over \$70 million of tribal income each year.<sup>5</sup> Indeed, in *Short* alone, plaintiffs' claims amount to more than \$135 million, although the Claims Court has not yet finally quantified the Government's liability.

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4. When § 407 was amended and reenacted in 1964, Congress was fully aware that the Interior Department had construed the predecessor phrase "Indians of the reservation" to refer only to recognized members of reservation tribes. The problem perceived was that the predecessor phrase excluded members who had moved off reservations from benefits except in unusual cases. App. 173, 184-85; *see, e.g.*, 25 U.S.C. § 184; *Halbert v. United States*, 283 U.S. 753, 762-63 (1931). The new (present) phrase "members of the tribe" allowed off-reservation tribal members to continue to share the benefits, but Indians who were not tribal members never had any entitlement whether they lived on or off a reservation. As the Assistant Commissioner for Indian Affairs explained to the House Committee, "We have been considering them [the two statutory phrases] to mean the same thing anyway. We cannot give money to anybody except members of the tribe anyway, but this clarifies the law . . ." App. 182.

5. If the court is correct and Congress did not refer to federally-recognized tribes in § 407 the Government may be liable for misapplying not only timber revenues but other revenues. This is because a series of tribal income statutes designate tribal beneficiaries in much the same way as does § 407. For example, 25 U.S.C. § 314 requires compensation for most rights-of-way to be paid "for the benefit of the tribe or nation;" 25 U.S.C. § 398b directs oil and gas lease proceeds payments to "the tribe of Indians for whose benefit the reservation or withdrawal was created or who are using and occupying the land;" 25 U.S.C. § 399 directs payment for gold and other mineral mining leases to "the Indians belonging and having tribal rights on the reservation." *See also*, 25 U.S.C. §§ 319, 320, 321, 398 and 402a. Under the authority of these statutes, the Interior Department handles hundreds of millions of dollars annually relying on its view that the references to "tribes" refer to federally-recognized Indian tribal governments, and no others.

The ruling below places the Secretary in a distinctly awkward position. If he continues to distribute tribal timber revenues exclusively to recognized tribes and their members he runs the risk that disenchanted non-members, on or off the reservation, may bring breach of trust suits in the Claims Court founded on the *Short* precedent. On the other hand, if, to escape liability, he begins to include non-members in distributions of timber revenues, he will substantially erode the federal commitment to promoting tribal self-determination through the vitalization of tribal government. As this Court noted pointedly in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 149 (1980):

Underlying the federal regulatory program rests a policy of assuring that the profits derived from timber sales will inure to the benefit of the Tribe, . . . That objective is part of the general federal policy of encouraging tribes "to revitalize their self-government" and to assume control over their "business and economic affairs." *Mescalero Apache Tribe v. Jones*, 411 U.S., at 151, . . . [T]he Federal Government has undertaken to regulate the most minute details of timber production and expressed a firm desire that the Tribe should retain the benefits derived from the harvesting and sale of reservation timber.

The import of the Court of Appeals' ruling for the daily administration and utilization of Indian forests is, perhaps, of even greater importance than the Treasury's exposure. Both allotted and unallotted Indian forests are managed under regulations recently discussed by this Court in *White Mountain Apache Tribe v. Bracker, supra*:

Acting pursuant to this authority [25 U.S.C. § 407], the Secretary has promulgated a detailed set of regulations to govern the harvesting and sale of tribal timber. Among the stated objectives of the regulations is the "development of Indian forests by the Indian people for the purpose of promoting self-sustaining communities, . . . Tribes are expressly authorized to establish commercial enterprises for the harvesting and logging of tribal timber.

448 U.S. at 146-47. The Secretary's regulations, App. 194, codified at 25 C.F.R. Part 163, rely heavily on the correctness of the Secretary's view that federally-recognized tribal

governments are the beneficiaries of § 407 timber sales. The regulations authorize establishing Indian tribal logging enterprises "with the consent of the authorized tribal representatives." App. at 198, 25 C.F.R. § 163.6(a). Each sale of unallotted timber requires "[t]hat consent is given by the authorized representative of the tribe." App. 199, § 163.7(a). The authorized representative of the tribe may allow timber to be sold without advertisement. App. 200, § 163.9. Actual contracts for the timber must be "executed by the authorized representative of the tribe or tribal corporation." App. 203, § 163.13(a). These procedures allow tribes to insist upon employment preference for tribal members, additional environmental protection measures and other matters of significance to the planning and governance of Indian reservations. As noted, this administrative structure is founded on a statute expressing the federal policy commitment to use timber on unallotted land to strengthen tribal government.

If the Court of Appeals' interpretation of 25 U.S.C. § 407 is correct, the Secretary will likely have to modify the consent, planning and approval processes established by the regulations. Frequently, the interests of tribal governments diverge from those of non-enrolled individual Indians, most of whom, like the plaintiffs in the instant case, do not live in reservation tribal communities and therefore tend to seek short-term cash dividends rather than long-range amenities. The Secretary will probably find it impossible to reconcile these differences, and may be forced for each reservation to determine which Indians are "communally concerned" with the resource.<sup>6</sup> Absent review by this Court, the lower court decision will erect a serious hindrance to effective administration of the Indian timber harvest statute.

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6. *Short* held the Secretary cannot avoid liability by relying on his solicitor's opinion concerning the correct beneficiary. App. 137. Neither can he do so by relying on a tribal roll made final by 25 U.S.C. § 163, for this authority was applied to the Hoopa Valley tribal roll in 1952. App. 128.

Finally, we ask the Court to consider the impact on the tribes themselves of the § 407 interpretation. Most tribes with substantial unallotted timber lands rely heavily on timber income to finance tribal governments. *See generally, White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). On the Hoopa Valley Reservation, since over 80% of the qualified *Short* plaintiffs are not residents of the Reservation, the timber income will quickly be disbursed, with no real long-range benefit to the Reservation. Similar results would occur elsewhere. As Congress recognized when it enacted § 407, it is only the recognized tribes that are truly "communally concerned" with the Reservation. App. 175, 182, 185. *See, e.g., White Mountain Apache Tribe v. Williams*, \_\_ F.2d \_\_, Slip op. at 17 (9th Cir. No. 81-5348, Feb. 7, 1984) (timber statute creates interest of Indian people in their capacity as a sovereign tribe; no congressional intent to create individual § 1983 rights).

## II. The Court of Appeals' Interpretation Of The Statutory Term "Tribe" As A Racial Classification Ignores The Constitutional Underpinnings For Federal Indian Law That Compel Treatment of Tribes As Politically - Not Racially-Defined Groups.

Section 407 of Title 25 provides, as we have emphasized, that the timber on unallotted lands shall benefit Indians who are "members of the tribe or tribes concerned." The court below held that "[t]he word 'tribe' (as related to Indians) has no fixed, precise or definite meaning". App. 7, 719 F.2d at 1137. In Section 407, the court concluded, "tribe" meant "the general Indian groups communally concerned with the proceeds - not an officially organized or recognized Indian tribe . . ." App. 7, 719 F.2d at 1136.<sup>7</sup>

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7. Ironically, although the lower court also looked to 25 U.S.C. § 479, the definition section of the Indian Reorganization Act, as a source of its definition of "tribe," App. 7, 719 F.2d at 1137, it did not mention the § 479 definition of "Indians", which includes only tribal members, descendants of such members residing on the reservation in 1934, and persons of half or more Indian blood. Few *Short* plaintiffs qualify under this standard.

The court held that qualified *Short* plaintiffs, notwithstanding their lack of tribal membership, should be considered "members of the tribe or tribes concerned." Summary judgment for 2,161 such individuals was affirmed because they are descendants of allottees of the reservation and possess a specified blood quantum, even though most of them have abandoned all tribal relations.<sup>8</sup> Membership in a tribe is irrelevant to qualification and the court quite clearly defined "tribe" in racial and genealogical rather than political terms. App.20.<sup>9</sup> This judicial construction is constitutionally suspect.

The constitutional infirmity here has two aspects. First, it is elemental that federal Indian law is founded upon the political relationship between the United States and Indian tribes. *See generally*, F. Cohen, *Handbook of Federal Indian Law*, at 1 (1982 ed.). The congressional and administrative practice of dealing with Indians through tribal organizations is rooted in the language of the Constitution. The Indian Commerce Clause grants power to Congress "[t]o regulate

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Footnote 7 (Con't)

The Indian Reorganization Act defined "tribe" broadly, of course, so disorganized "tribes" could reorganize under its provisions. Thereafter, however, the organized tribes superseded the unorganized classes of "Indians" for federal statutory purposes. In any event, the Indian vote was against application of the Act to the Hoopa Valley Reservation. App. 105.

8. Over 80% of qualified plaintiffs have left, or never were on, the Reservation according to plaintiffs' declarations in this case. See Appendix to Tribe's Request for Review of Trial Judge's Opinion Setting Standards, at 90 and Exhibits 3-5, filed in the Court of Claims June 25, 1982. Most plaintiffs are predominantly non-Indian in ancestry. As noted above, the Government recognizes the Yurok Tribe of the Addition, *see* 48 Fed. Reg. 56865 (Dec. 23, 1983), but only a few of the *Short* plaintiffs are involved in its affairs and it remains unorganized. No tribe is a claimant in *Short*.

9. The court defined the groups of plaintiffs held to be qualified under the § 407 standard. App. 21-23, 719 F.2d at 1143-44. The standards include five classes fashioned by analogy to fragmentary descriptions of how the Hoopa Valley Tribe determined its tribal membership. Three of the categories include a blood quantum requirement, and all five categories require descendants from Indian individuals who had an historical tie to the Hoopa Valley Reservation.

Commerce . . . with the Indian Tribes." It has long been recognized that the term "tribe" as used in the Commerce Clause and in federal statutes, has a political content. As this Court said in *Montoya v. United States*, 180 U.S. 261, 266 (1901), an Indian tribe is "a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory."

The tribal entity is the medium through which group rights pass from generation to generation and may be exercised by individual members. This Court has consequently held that the Congress may not constitutionally deal with a group of Indian people as a "tribe" if they lack essential tribal characteristics:

Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts.

*United States v. Sandoval*, 231 U.S. 28, 46 (1913). *See also, Perrin v. United States*, 232 U.S. 478, 484-86 (1914); *United States v. John*, 437 U.S. 634 (1978).<sup>10</sup> The *Short* plaintiffs lack the characteristics, political and otherwise, of a tribe; indeed, they expressly disclaim such characteristics.

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10. In *John*, the State argued the federal government lacked power under the Indian Commerce Clause to deal with the Mississippi Choctaws because of a lapse in federal recognition of a tribal organization in Mississippi. 437 U.S. at 652. In rejecting this argument this Court emphasized the original tribal status of the Choctaws, that their tribal status was clarified by proclamation of a reservation, and approval of the Constitution adopted by the tribe under the Indian Reorganization Act. Although the Court held the lapse of federal supervision over the tribe did not destroy federal power to deal with them, the Court relied on the fact that the Mississippi Choctaws were at all relevant times a tribe. 437 U.S. at 652-53.

claiming only individual entitlement. For example, in Plaintiffs' Memo in Opposition to Defendant's Motion to Substitute the Yurok Tribe as Plaintiff at 22, filed July 27, 1979, plaintiffs said (original emphasis):

Plaintiffs argued then [in 1963]—as they do now—that they derived their right to share in the income of the Hoopa Valley Reservation not from membership in a *tribe* but from their common status as Indians or descendants of Indians who settled on the Reservation.

The trial judge in that proceeding, and ultimately the full Court of Claims, adopted plaintiffs' view of their status. App. 31-32, 661 F.2d at 155. It is doubtful that the court can now arbitrarily call such plaintiffs a "tribe", consistent with Congress' Commerce Clause power. *See also, Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

Second, Congressional power to deal with Indians as a racial, as opposed to a political group, is constrained by the Equal Protection guarantees implicit in the Due Process Clause of the Fifth Amendment. Several recent cases have considered whether federal statutes singling out tribal Indians as a class violate this constitutional standard. This Court has rejected these challenges, but only because the constitutionally-recognized status of tribes as separate political communities distinguishes Indians who are members of tribes from other classes of Indians and other persons. Thus, in *United States v. Antelope*, the Court stated that

[F]ederal regulation of Indian affairs is not based upon impermissible classifications. Rather, such regulation is rooted in the unique status of Indians as 'a separate people' with their own political institutions. Federal regulation of tribes, therefore, is governance of once-sovereign political communities; it is not to be viewed as legislation of a "'racial' group consisting of 'Indians'".

430 U.S. 641, 646 (1977). *See also id.* at 646, n.7.<sup>11</sup> Similarly, in *Morton v. Mancari*, 417 U.S. 535 (1974), the Court upheld

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11. Unlike this Court's view in *Antelope* that Indians who had abandoned tribal life or were "terminated" by statute were not within

against an Equal Protection challenge an employment preference extended to Indians by the Bureau of Indian Affairs pursuant to the Indian Reorganization Act. The Court took pains to emphasize, however, that the preference was not directed toward a "racial group consisting of 'Indians'" but applied only to members of "federally-recognized" tribes. The preference thus excluded many individuals who could be racially "classified as 'Indians.'" *Id.* at 553-54, n.24.<sup>12</sup>

It is apparent that racial distinctions, as opposed to political ones, are subject to much stricter constitutional scrutiny. *E.g., Keyes v. School Dist. No. 1*, 413 U.S. 189, 195-98 (1973); *Korematsu v. United States*, 323 U.S. 214, 216 (1944). Thus, the court creates constitutional mischief, since regulatory programs based on the unique status of members of federally-recognized tribes are not subject to such strict scrutiny, but will be upheld so long as the special treatment "can be tied rationally to the fulfillment of Congress' unique obligations toward Indians." *Morton v. Mancari*, 417 U.S. at 555 (1974); *accord, Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73, 83-85 (1977).

In *Short*, the Court of Appeals attributed to Congress an intention to act inconsistently with the dominant federal policy of furthering tribal self-determination. *See generally, White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 149

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Footnote 11 (Con't)

the reach of the Major Crimes Act, 430 U.S. at 646, n.7, the lower court held that "Indians" who had abandoned ties with the Hoopa Valley Reservation nevertheless remained beneficiaries of the tribal timber statute. App. 17, 719 F.2d at 1141; *but see* App. 165, 25 C.F.R. §§ 111.2, 111.4.

12. *See also, Washington v. Colville Confederated Tribes*, 447 U.S. 134, 160-61 (1980); *United States v. Washington*, 520 F.2d 676, 682, n.1 (9th Cir. 1975); *cert. denied*, 423 U.S. 1086 (1976).

(1980); *Bryan v. Itasca County*, 426 U.S. 373, 388, n.14 (1976); Indian Self-Determination and Education Assistance Act of 1974, P.L. 93-638, 25 U.S.C. § 450 *et seq.* Tribal rights are to be denied the federally-recognized tribe and distributed to individual non-tribal Indians. The reference to "tribe" in § 407 should not be read in a way that creates such grave constitutional problems under the Commerce Clause and the Due Process Clause.

In other contexts, the Courts of Appeals have carefully defined a threshold, which includes a political component, to qualify a group as a "tribe" for federal statutory or treaty purposes, thereby evading such problems. In the land claims cases arising under 25 U.S.C. § 177 and in the treaty fishing cases, the courts have insisted that to constitute a "tribe" the group must survive as a distinct community and exercise political control over a territory even if ill-defined. See e.g., *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 582-85 (1st Cir.), *cert. denied*, 444 U.S. 866 (1979); *United States v. Washington*, 641 F.2d 1368, 1373 (9th Cir., 1981), *cert. denied*, 454 U.S. 1143 (1982). Since the rulings of the *Short* court are now based on § 407, plaintiffs seek the rights of a "tribe", yet they do not meet the threshold political characteristics of groups which can transmit, exercise or assert "tribal" rights as "tribes."

To allow judicial definition of "tribes" in racial rather than political terms, is to set dangerous precedent. There is no reason to impute to Congress an intention to abandon the protective umbrella inherent in the traditional definition of "tribe" in favor of a vulnerable racially-defined one. Further, the constitutional quagmire created here is easily avoided. In *United States v. Sandoval*, 231 U.S. at 47 (1913) this Court held:

As was said in *United States v. Holliday*, 3 Wall. 407, 419: "In reference to all matters of this kind, it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs. If by them those Indians are recognized as a tribe, this court must do the same. If they are a tribe of Indians, then, by the

Constitution of the United States, they are placed, for certain purposes, within the control of the laws of Congress."

Congress and the Executive have explicitly provided avenues by which a group which seeks tribal rights can be determined to be a tribe. Recently, the Department of the Interior adopted detailed regulations establishing procedures for determining that an American Indian group exists as an Indian tribe. These regulations look to evidence of the group's continuous Indian identity, long-standing relationships with other governments, residence in a specific area viewed as distinctly Indian, maintenance of tribal political influence in accordance with governing documents, lists of members, and other attributes. App. 156-58, 25 C.F.R. § 83.7. But the plaintiffs in *Short* have not sought tribal status by these means.

Deference to the Department of the Interior's primary jurisdiction over identification of tribes not only excuses federal judges from the hazardous task of fashioning standards for determining the existence of tribal status, but also allows the Executive Branch to uphold its trust duty to protect the rights of those Indians who really compose tribes. If the concept of "tribe" has lost "definite meaning," as the lower court concluded, App. 7, 719 F.2d at 1137, it will be impossible to prevent multiple and inconsistent adjudication of tribal rights in suits brought by non-tribal individuals. In fact, it was precisely this danger that led the First Circuit Court of Appeals recently to adhere in *James v. Watt*, 716 F.2d 71, 72 (1st Cir. 1983) *cert. pending* in No. 83-623, to an earlier ruling that the Indian Non-Intercourse Act granted land claims causes of action to tribes that individuals cannot assert solely on their own behalf. *Epps v. Andrus*, 611 F.2d 915, 917 (1st Cir. 1979).

In § 407 Congress explicitly referred to rights of "tribes," a term that does not exist in a vacuum. To allow the lower court to redefine that concept in racial terms and allow that class to assert rights and privileges which flow from tribal citizenship, is to ignore the constitutional threshold for

Government-Indian relations. It sets a dangerous and disruptive precedent for other areas of the law where tribal rights are asserted.

### **III. The Court Of Appeals' Ruling Ignores The *Mitchell II* Requirement That To Present A Valid Tucker Act Claim The Source Of Substantive Law Relied Upon Must Be Fairly Interpreted As Mandating Compensation For The Damages Sustained.**

This case substantially broadens access to the new Claims Court by expansively construing 28 U.S.C. § 1491. In *Mitchell II*, this Court, relying upon *United States v. Testan*, 424 U.S. 392, 400 (1976) and *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1009 (Ct. Cl. 1967) reconfirmed that to state a claim cognizable under the Tucker Act, the claimant must demonstrate that the source of substantive law relied upon "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." U.S., 103 S. Ct. at 2968. Thus, although the Tucker Act waives the sovereign immunity of the United States, in order to state a valid Tucker Act claim "founded . . . upon . . . any Act of Congress" the court must determine whether the statute

can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties [it] impose[s].

*Id.* at 2969. This is a subject matter jurisdiction inquiry. *Id.* at 2974.

The Court of Appeals' attempt, in response to the motions to dismiss, to squeeze *Short* into conformity with the *Mitchell II* mandate merely brings the court back to the error rejected by this Court in *Mitchell I*. One statute has emerged as the jurisdictional and substantive heart of the case, 25 U.S.C. § 407, yet it was not mentioned by the court until 1983, 10 years after the Court of Claims ruled that "the source of all [plaintiffs'] claims" was the 1864 Act. App. 55. The Court of Appeals now recognizes that the 1864 Act does not meet the *Mitchell II* test because it does not mandate

compensation to anybody and could not command payment of timber revenues to plaintiffs in *Short* because it was enacted 46 years before Congress conveyed the right to reservation timber sale proceeds. App. 6; see, *Mitchell I*, 445 U.S. at 545 (1980); *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 103 (1949). But while the court disclaimed reliance on the 1864 Act as the jurisdictional basis of its *Short* rulings, it nevertheless adhered to the analysis founded upon that discredited statute both to put a gloss on its interpretation of § 407, and as a substantive basis for recovery as "law of this case." App. 8, 719 F.2d at 1137.

Thus, in support of its conclusion that the term "tribe" in § 407 does not mean "an officially organized or recognized Indian tribe", App. 6-7, 719 F.2d at 1136, the court notes that this "is the proper interpretation if, as has already been held, qualified plaintiffs are entitled to recover a proper share of the proceeds." *Id.* But that conclusion, of course, was founded upon the 1864 Act without reference to the rights created or duties imposed by § 407. Such circular reasoning violates the letter and spirit of *Mitchell II*.

This Court's admonition that the claimant must point to a statute which can be fairly interpreted as mandating compensation for the damages sustained punctures the lower court's ruling. With respect to statutory claims, Congress in the Tucker Act has waived the sovereign immunity of the United States only as to claims truly "founded" upon an act of Congress. In *Mitchell II* this Court cited with approval *Eastport S.S. Corp. v. United States*, 372 F.2d 1002 (Ct. Cl. 1967). There the court explained,

[T]he historical boundaries of our competence have excluded those instances in which the basis of the federal claim - be it the Constitution, a statute, or a regulation - cannot be held to command, in itself and as correctly interpreted, the payment of money to the claimant, but in which some other principle of damages has to be invoked for recovery.

*Id.* at 1008. But it is painfully apparent that § 407, although it may mandate payment to tribes or their members, does not mandate payment to plaintiffs. Liability is *really* being

imposed, not because of a Secretarial breach of the duty imposed by the substantive statute now relied upon, as *Mitchell II* requires, but rather because the court had previously ruled that the Secretary violated *another* statute - the 1864 Act, a statute which imposes no relevant duty. The lower court's attempted bootstrap compliance with *Mitchell II* using law of the case principles is improper and a significant extension of the limited Tucker Act jurisdiction.<sup>13</sup> The lower court's substitution of a new substantive and jurisdictional foundation for *Short* while leaving intact and binding on the parties all the previous *Short* rulings, is reminiscent of the magician's "tablecloth" trick: with a deft flick of his wrist, he removes the tablecloth, leaving the china, silver and glassware undisturbed on the table.

This is no mere technical defect. The lower court's analysis is contaminated by matters not germane to § 407 and ignores other factors relevant to what "tribes" can be considered "concerned" with the portion of the Reservation at issue and who are the members of those tribes. When the question whether § 407 can support relief in *Short* is squarely addressed, as it should have been but was not, it compels a different analysis, different evidence, and, the Tribe insists, a different result.

Section 407 does not mandate payment to non-tribal plaintiffs.<sup>14</sup> From the outset of the *Short* litigation, plaintiffs

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13. Although this Court spoke in *Mitchell II* of the Tucker Act as being jurisdictional, it is readily apparent that it does not operate in the same jurisdictional sense as does, for example, 28 U.S.C. § 1332, the diversity of citizenship statute. Under that statute, once a plaintiff demonstrates diversity and the required amount in controversy, he is free to assert a claim based on federal or state statutory law, common law, or principles of equity. The Tucker Act, however, operates quite distinctly since the sovereign immunity of the United States is implicated. In order to come within the waiver of sovereign immunity, the claimant must demonstrate a claim founded upon an act of Congress that can be fairly read as mandating compensation to plaintiff for the breach alleged.

14. Much less does 31 U.S.C. § 1321 mandate payment of deposited timber revenues to plaintiffs. The Court of Appeals' reliance on § 1321 as an alternate jurisdictional basis, App. 8, merely resurrects the erroneous

conceded that they were not members of the Hoopa Valley Tribe, not eligible for membership in the Tribe, and that they did not assert tribal rights from any other tribe. The Secretary of the Interior has literally followed the statute's mandate by making available the proceeds of timber sales on unallotted Hoopa Valley Indian Reservation lands to the only organized and federally recognized tribe of the Reservation, the Hoopa Valley Indian Tribe. Yet liability is imposed. The lower court thereby strips the "fair interpretation" requirement for jurisdiction over statutory claims of all meaning.<sup>15</sup>

### CONCLUSION

For the reasons set forth herein, a writ of certiorari should be granted.

Respectfully submitted,

Thomas P. Schlosser  
Attorney for Petitioner

March 3, 1984.

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Footnote 14 (Con't)

analysis soundly rejected by this Court in *Mitchell I*. While § 1321, like the General Allotment Act in *Mitchell I*, creates a trust, it creates no rights or duties relevant to the claim presented here. *See Mitchell II*, \_\_\_ U.S. \_\_\_, 103 S. Ct. 2971-72 (1983).

15. The Court of Appeals' attempt simultaneously to disclaim the 1864 Act as a jurisdictional base and preserve the substantive rulings based upon it, carries the court into numerous distortions and inconsistencies. Thus, notwithstanding the fact that the ultimate issue in *Short* now becomes whether plaintiffs qualify as "members of the tribe or tribes concerned" under § 407, the Court of Appeals continues to insist that on its merits this case "is a matter of individual entitlement, not of tribal membership. . . ." App. 9, 719 F.2d at 1137. Similarly, the court retains its earlier entitlement ruling that the Hoopa tribal standards are to be used as a general guide to determine entitlement. The court has therefore created the anomalous situation that it is using Hoopa tribal standards to determine what non-members of the Tribe should be considered

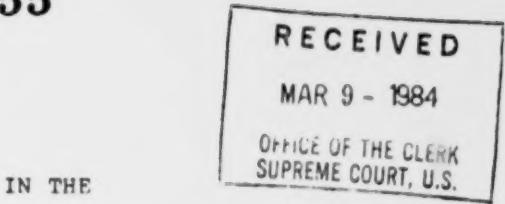
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Footnote 15 (Con't)

"members of the tribe or tribes concerned" under § 407. Surely, this is self-contradictory. *Also compare* App. 7 with App. 10, n.10, and App. 20.

Furthermore, the court declares that nothing in its opinion interferes in any way with the decision of the Yuroks to establish a tribe and if they do so "they are free to vote any membership standard they desire." App. 20, 719 F.2d at 1143. If this *were* to occur, however, one must wonder whether the members of the Yurok Tribe would be entitled to participate in these § 407 proceedings or whether the Secretary would be bound to say that *Short concerned individual entitlement*, and that only qualifying *Short* plaintiffs, regardless of non-membership in any tribe, are entitled to recover. One interpretation is inconsistent with the *Short* holding and the other violates the plain meaning of § 407.

83-1555



NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

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Hoopa Valley Tribe of Indians,

Petitioner,

v.

Jessie Short, et al.,

Respondents.

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MOTION FOR LEAVE TO FILE PETITION  
APPENDIX IN PRESENT FORM

Pursuant to Rule 42, the Hoopa Valley Tribe of Indians, Petitioner in this proceeding, hereby moves for leave to file the Appendix to the Tribe's Petition For Writ of Certiorari in its present printed form despite the fact that part of the Appendix, taken from an appendix filed two years ago, appears to be set in 10-point type.

On March 3, 1984 the Hoopa Valley Tribe filed a Petition For Writ of Certiorari to the United States Court of Appeals for the Federal Circuit. The Appendix was separately bound since it numbers some 278 pages. Included in the Appendix at pages 24-151 are two earlier opinions in this case, opinions of the United States Court of Claims which are reported at 661 F.2d 150 (1981) and 202 Ct. Cl. 870 (1973). These were included pursuant to Rule 21(k)(ii) which relates to other opinions, findings, and conclusions rendered in the case.

On March 7, 1984 counsel for the Hoopa Valley Tribe was called by the Office of the Clerk of this Court and was notified

that those 128 pages of the Appendix are set in less than 11-point type. The remainder of the Appendix and the Petition was unobjectionable. For the reasons set forth below the Hoopa Valley Tribe respectfully requests leave to file the Appendix in its present form:

1. The Appendix pages at issue are exact reproductions of the Appendix to the Tribe's Petition at an earlier stage in this case, Hoopa Valley Tribe of Indians v. Jessie Short, October Term 1981, No. 81-1371, cert. denied, 455 U.S. 1034 (1982). The type size and text contained on each of pages A1-16 and B1-112 of the Appendix in No. 81-1371 is precisely the same as that found on pages 24-151 in the Petition Appendix currently at issue. Our only change was to renumber the pages. The Appendix and the Petition in No. 81-1371 were docketed and, to the best of our knowledge, were received without objection by the Clerk of this Court. Since the present pages are made from the same originals counsel in good faith believed they were acceptable.

2. The financial burden of again typesetting and binding the early Court of Claims' opinion would exceed \$4,000.00. These are not opinions of the Court of Appeals for the Federal Circuit, whose decision is sought to be reviewed here. The Court of Appeals ruling is unquestionably set in 11-point type. Under these circumstances, the hardship to the Tribe imposed by re-printing appears to outweigh the need strictly to distinguish between typed matter of 11-point size and that which is between 10 and 11-point in size.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of March, 1984.

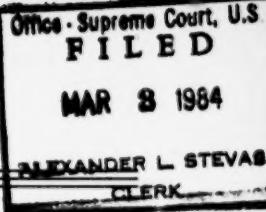
ZIONTZ, PIRTLER, MORISSET,  
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Attorney of Record for the  
Hoopa Valley Tribe of Indians

83 - 1555



No. -

IN THE  
Supreme Court of the United States

October Term, 1983

HOOPA VALLEY TRIBE OF INDIANS,  
*Petitioner*,

v.

JESSIE SHORT, et. al.,  
*Respondents*.

APPENDIX TO PETITION  
FOR WRIT OF CERTIORARI

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## APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT

JESSIE SHORT, ET AL.	)	
Appellants,	)	
v.	)	Appeal No. 102-63
THE UNITED STATES,	)	
Cross-Appellant and	)	
Appellee,	)	
and	)	
HOOPA VALLEY TRIBE,	)	
Cross-Appellant and	)	
Appellee.	)	

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DECIDED: October 6, 1983

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Before RICH, DAVIS, BENNETT, SMITH and NIES,  
*Circuit Judges*. DAVIS, *Circuit Judge*.

This ancient case (commenced against the Government in the Court of Claims some two decades ago) comes once again for appellate scrutiny. Ten years ago, in [App. 40] 486 F.2d 561 (Ct. Cl. 1973), *cert. denied*, 416 U.S. 961, the Court of Claims decided that the Hoopa Valley Reservation was one reservation all of whose Indian peoples (including, in general, non-Hoopa Indians residing on or connected with the reservation) were "Indians of the Reservation" entitled to equal rights in the division of timber profits (and other income) from the unallotted trust land of the reservation, and therefore that the United States had wrongfully paid those profits exclusively to the members of the Hoopa Valley Tribe.<sup>1</sup> In 209 Ct. Cl. 777 (1976), the court allowed interventions by new plaintiffs and closed the class of

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1. The Hoopa Valley Tribe, which previously participated as *amicus curiae*, was permitted to intervene at that time as a party defendant.

*See also Hoopa Valley Tribe v. United States*, 596 F.2d 435 (Ct. Cl. 1979).

plaintiffs (now amounting to some 3800). In [App. 24] 661 F.2d 150 (Ct. Cl. 1981), *cert. denied*, 455 U.S. 1034 (1982), the court denied new motions to dismiss and to substitute the Yurok Tribe as plaintiff, and directed the trial judge to recommend standards for the qualification of the approximately 3800 remaining plaintiffs as Indians of the Hoopa Valley Reservation entitled to share in the income of the Reservation. On March 31, 1982, then Trial Judge Schwartz, who had long handled the case at the trial level, issued his opinion on that subject. In that decision, he established standards for qualifying the various plaintiffs and granted and denied the plaintiffs' motions for summary judgment in accordance with those standards. All parties appeal from that decision which is now before us.<sup>2</sup>

Shortly before and at the oral argument of this appeal, the United States and the Hoopa Valley Tribe raised again the issue of the jurisdiction of the Court of Claims (and, now, of the Claims Court) over the entire suit. Though the question of the court's jurisdiction had been previously raised (and jurisdiction sustained) on a number of occasions, the new challenge was on grounds not before articulated (though the assault was one that could readily have been presented much earlier). We allowed the Government and the Hoopa Valley Tribe to file motions to dismiss on the new basis, and those motions have been extensively briefed. We withheld decision on the appeal until the Supreme Court had decided *United States v. Mitchell*, U.S. Sup. Ct., Oct. Term 1982, No. 81-1748 (*Mitchell II*). That decision was rendered on June 27, 1983 (\_\_\_\_ U.S. \_\_\_, 103 S. Ct. 2961, 51 U.S.L.W. 4999), and we then allowed the parties to brief the impact on the present case of the Supreme Court's recent opinion and ruling. We are now ready to dispose of the current appeal.

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2. The parties filed petitions for review of Trial Judge Schwartz's decision before October 1, 1982. Pursuant to an October 4, 1982 order of this court, the Claims Court entered judgment on October 6, 1982, corresponding to the decision recommended in this case by Trial Judge Schwartz. The case was transferred on October 1, 1982, to this court under section 403 of the Federal Courts Improvement Act of 1982, 96 Stat. 57-8 (April 2, 1982).

In Part I of this opinion, *infra*, we discuss the new challenge to jurisdiction and reject it, especially in the light of *Mitchell II*. In Part II, *infra*, we consider the merits of Judge Schwartz's standards and affirm them, as well as his conclusions of law.

### I. Jurisdiction

This is an action for monies said to have been illegally distributed to members of the Hoopa Valley Tribe, without any share going to those of the plaintiffs who qualify as Indians of the Hoopa Valley Reservation. The details are set forth in the Court of Claims' decisions reported at [App. 24 and 40] 486 F.2d 561 and 661 F.2d 150. The current jurisdictional attack<sup>3</sup> is that Congress has not waived sovereign immunity for the suit and in any event that plaintiffs have no substantive claim for money from the United States (even if their allegations and substantive positions are sustained, as they have been).

#### A.

In *Mitchell II*, the Supreme Court upheld jurisdiction in the Court of Claims (and, now, in the Claims Court) of a suit by Indian plaintiffs for damages for breach of fiduciary duties by the Government. On the jurisdictional issue now before us, the current case is essentially governed by that recent decision. Just like *Mitchell II*, this litigation concerns Indian-owned forest lands on an Indian reservation (there, the Quinault Reservation in Washington; here, the Hoopa Valley Reservation in California), with these forest resources being managed by the Department of the Interior which exercises "comprehensive" control over the harvesting of the Indian timber. See Part III of the Supreme Court's opinion in *Mitchell II*, \_\_\_ U.S. \_\_\_, 103 S.Ct. at 2969-74, 51 U.S.L.W. at 5003-5004; also see \_\_\_ U.S. \_\_\_, 103 S.Ct. at 2965-66, 51 U.S.L.W. at 5000. The "broad" statutory authority of the

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3. As we have said, there have been several other jurisdictional challenges in the past—all rejected by the Court of Claims.

Secretary of the Interior over the sale and management of the timber on the two reservations is precisely the same, *i.e.*, 25 U.S.C. §§ 405-406. In *Mitchell*, those plaintiffs claimed breach by the Government of fiduciary duties in the management and sale of the timber; here, plaintiffs likewise claim breach of such fiduciary duty. The difference is that in *Mitchell II* the alleged injury had to do with such things as the price obtained for the timber, failure to manage on a sustained yield basis, and exacting improper fees and charges - here the injury is the discriminatory distribution of the proceeds of the timber sales and management (and other Reservation income). The Supreme Court expressly held that the statutes and regulations relating to the management of Indian timber [App. 194], *see* primarily 25 U.S.C. §§ 405-407, established a fiduciary relationship with respect to the timber, and because they clearly established such "fiduciary obligations of the Government in the management and operation of Indian land and resources, they can fairly be interpreted as mandating compensation by the Federal Government for damages sustained. Given the existence of a trust relationship, it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties." — U.S. —, 103 S.Ct. 2971-73, 51 U.S.L.W. 5004-5005, especially — U.S. —, 103 S.Ct. 2972, 51 U.S.L.W. 5005. It must also follow that the Government was under fiduciary obligations with respect to the comparable Indian forest lands involved here, and is liable for breach of fiduciary obligation in failing to distribute the sale proceeds (and other income) to persons entitled to share in those proceeds - such as those plaintiffs who turn out to be qualified in this case.

## B.

The contentions of the Government and of the Hoopa Valley Tribe (on the matters discussed in this Part I) that have survived *Mitchell II*<sup>4</sup> all lack merit. First, it is conceded

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4. We refer to the contentions made in the briefs filed with us by those parties after and in the light of *Mitchell II*.

that *Mitchell II* destroys the argument that there has been no waiver of sovereign immunity. The Supreme Court ruled, overriding prior intimations to the contrary, that the Tucker Act is the only necessary consent to suit where statutes and regulations create substantive rights to money damages against the United States. — U.S. —, 103 S.Ct. at 2969, 51 U.S.L.W. at 5003. "If a claim falls within this category, the existence of a waiver of sovereign immunity is clear" and the statutes or regulations founding the claim "need not provide a second waiver of sovereign immunity." *Id.* The opinion went on to declare that, in determining whether statutes or regulations create substantive rights to money, the court need not construe them "in the manner appropriate to waivers of sovereign immunity." *Id.*

The remaining issue (for this Part I) is whether there are statutes or regulations creating substantive rights to money. As we have said *supra*, *Mitchell II* specifically held that the forest management laws and regulations (which likewise pertain to this case) do create such substantive rights to money. The Government and the Hoopa Valley Tribe now try to distinguish *Mitchell II* by saying that that case involved only allotted lands, while the present litigation concerns unallotted lands. The former are dealt with in 25 U.S.C. § 406 and the latter in 25 U.S.C. § 407. But the Supreme Court's whole opinion consistently treats together *both* sections (and the regulations under them) in ruling that the statutory scheme creates a fiduciary duty toward the Indians entitled to the proceeds of the forest. See — U.S. —, 103 S.Ct. at 2963-64, 2964-65, 2969-71, 2971-74, 51 U.S.L.W. at 5000, 5001, 5003-04, 5004-5005. The comprehensive control by the Interior Department is precisely the same for both types of land, and that is the primary reason for finding a fiduciary duty on the part of the Government, — U.S. —, 103 S.Ct. at 2971-74, 51 U.S.L.W. at 5004-05. The purpose to benefit the Indians is equally clear. Section 407 (treating with unallotted lands) authorizes sale by Interior of timber on unallotted lands, and then specifically provides that "the proceeds from such sales \*\*\* shall be used for the benefit of the Indians who are

members of the tribe or tribes concerned in such manner as [the Secretary] may direct." In this respect there is no substantial difference between sections 406 and 407,<sup>5</sup> and both "can fairly be interpreted as mandating compensation by the Federal Government for damages sustained." — U.S. \_\_\_, 103 S.Ct. at 2973-74, 51 U.S.L.W. at 5005.

Both movants (the Government and the Hoopa Valley Tribe) also make much of the fact that the Act of April 8, 1864, 13 Stat. 39 [App. 55-56], which authorized the establishment of the Hoopa Valley Reservation and on which the Court of Claims primarily based its determination that qualified plaintiffs were entitled to share in the disputed monies (although they were not members of the Hoopa Valley Tribe), did not contain any authorization to the Government to sell or manage timber or empower the Government to distribute the proceeds. That may be true but it is irrelevant to the jurisdictional point before us. When this action was begun in 1963, the timber management legislation (mainly 25 U.S.C. §§ 405-407) and the regulations thereunder [App. 194], which do sustain jurisdiction, had long been on the books<sup>6</sup> and covered all the monies claimed in the suit (which do not go back beyond the six years prior to the commencement of the action in 1963). The function of the 1864 statute is to help show that the Government had a fiduciary relationship toward qualified plaintiffs with respect to the Hoopa Valley Reservation and also to show that the Secretary's action in excluding all but members of the Hoopa Valley Tribe from the distribution of the monies was unlawful.

It is also said that 25 U.S.C. § 407 directs use of the timber proceeds for the benefit of Indians "who are members of the tribe or tribes concerned," and that none of the plaintiffs is a member of an organized or recognized "tribe" (as the Hoopa

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5. Section 406 provides that proceeds of sales from allotted land "shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior" (emphasis added).

6. The first of these statutes was enacted in 1910, and the first regulations issued in 1911.

Valley Tribe has been since 1950). But it is clear to us that Congress, when it used the term "tribe" in this instance, meant only the general Indian groups communally concerned with the proceeds - not an officially organized or recognized Indian tribe - and that the qualified plaintiffs fall into the group intended by Congress. This was in effect an implicit holding of the Court of Claims when it decided in 1981 (*en banc*) that the non-organized Yurok tribe should not be substituted for the present plaintiffs. [App. 28-34] 661 F.2d at 153-156. In any event, it is the proper interpretation if, as has already been held, qualified plaintiffs are entitled to recover a proper share of the proceeds. From its original enactment in 1910 until its amendment and reenactment in April 1964, § 407 provided that proceeds from the sale of timber on unallotted lands "shall be used for the benefit of *Indians of the Reservation*" (emphasis added).<sup>7</sup> The 1964 substitution of "members of the tribe or tribes concerned" for "Indians of the Reservation" was obviously not designed to cut off existing rights of Indians of a reservation with respect to communal land (or to change the definition of those entitled) but rather more clearly to allow coverage of Indians who were entitled to proceeds from reservation property but who happened to reside elsewhere than on the reservation. H.R. Rep. No. 1292, 88th Cong., 2d Sess. [App. 172-74], reprinted in 1964 U.S. Code Cong. & Ad. News 2162-63.<sup>8</sup> The word "tribe" (as related to Indians) has no fixed, precise or definite meaning but can appropriately include "Indians residing on one reservation." See the definition in 25 U.S.C. § 479 (part of the Indian Reorganization Act of June 18,

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7. This was the way the statute read when this suit was begun in 1963.

8. The Hoopa Valley Tribe attempts, by referring to unpublished testimony at committee hearings [App. 178-87] and by offering a present-day affidavit of a witness at the hearing in the 1960's [App. 191], to persuade us that what is now § 407 was always meant to cover only organized tribes, but this far-fetched "legislative history" is totally unpersuasive (even if admissible, which is very questionable) as against the official history, the terms of the legislation, and the whole context of the unpublished hearings.

1934). With respect of the Hoopa valley Reservation, that is its meaning in 25 U.S.C. § 407.

Finally, there can be no doubt whatever that, if the Secretary decides (as he has) to distribute proceeds under § 407, he must act non-discriminatorily and cannot exclude any of those Indians properly entitled to share in the proceeds. In this instance the Court of Claims has twice held that qualified plaintiffs are entitled to share and that their exclusion was arbitrary (*see* [App. 144] 202 Ct. Cl. 870, 980-81 (finding 189); [App. 31-32] 661 F.2d at 155) - and those holdings are the law of this case. In § 407 Congress obviously did not permit the Secretary, once he decides to distribute proceeds, to make arbitrary classifications in distributing those proceeds.

### C.

A conceptually separate (though closely related) ground of jurisdiction is supplied by the fact that plaintiffs are suing for a portion of the funds collected by the Government from sales of Indian timber and initially deposited in trust funds in the Treasury before the illegal distribution. Most (if not all) of the monies for which plaintiffs are suing were deposited in the Treasury in a "proceeds of labor" account or an account for "interest on proceeds of labor." *See* [App. 134-35] 202 Ct. Cl. at 970-71. Under 31 U.S.C. § 1321(a)(20) (as previously worded and as worded in Pub. L. 97-250, Sept. 13, 1982, 96 Stat. 919) those are designated trust funds; accordingly, the proper beneficiaries can sue under the Tucker Act if those funds illegally leave the Treasury. There is, of course, jurisdiction to decide whether claimants are proper beneficiaries (at least if, as here, their claims are substantial and non-frivolous). It has now been decided (in the Court of Claims decisions already cited) that qualified plaintiffs have a direct interest in those funds, which are now or previously were in the Treasury, and are proper beneficiaries. They therefore have a right to sue for the parts of those funds improperly distributed to others or illegally

withheld from those claimants. *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1007 (Ct. Cl. 1962); *Hoopa Valley Tribe v. United States*, 596 F.2d 435, 436-37 (Ct. Cl. 1979). If, as here, monies are collected and held by the Government for particular persons, the Tucker Act authorizes suit even though the person has not himself paid over the money. See *Mitchell II*, \_\_\_ U.S. \_\_\_, 103 S.Ct. 2971, fn. 23, 51 U.S.L.W. 5004, fn. 23.

#### D.

For these reasons we deny the motions to dismiss and reaffirm the jurisdiction of the Court of Claims and the Claims Court over this action.

#### II. Merits

On its merits this case presents the standards to be applied in determining those of the 3800 plaintiffs who are qualified to share in the Reservation's timber proceeds (and other income) as Indians of the Reservation.<sup>9</sup> This is a matter of individual entitlement not of tribal membership for other purposes. See *Short v. United States*, *supra*, [App. 29-31] 661 F.2d at 154. In its *en banc* decision of September 23, 1981, the Court of Claims, [App. 24, 36-39] 661 F.2d 150, 158-59, held that (a) "the standards used to determine the membership of the Hoopa Valley Tribe [i.e., those who actually received shares of the monies] also provide an appropriate basis for determining which of the plaintiffs are Indians of the Reservation"; (b) the trial judge should initially formulate those standards but in doing so "basically should apply" the Hoopa Valley Tribe standards; (c) the trial judge had, however, "sound discretion to determine what, if any, changes should be made in the Hoopa standards and in the application of the governing standards in individual cases"; and finally (d) "[t]here is need for some flexibility, so that

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9. Judgments have already been entered for 22 plaintiffs determined by the Court of Claims to be qualified and for 121 more whose status the Government did not challenge after the 1973 decision on liability. See *Short v. United States*, *supra*, [App. 25-31] 661 F.2d at 151, 152, 153, 154.

recognition can be given to the small number of cases in which the [Hoopa] standards cannot be strictly applied or in which their strict application would produce manifest injustice. Moreover, there may be differences between the situations of the Hoopas and the Yuroks [plaintiffs claim to be Yuroks] that necessitate some differences in the standards governing the membership of the two Tribes."<sup>10</sup>

Judge Schwartz's comprehensive and careful opinion is designed to meet those directives. First he set out in detail the standards actually used for membership in the Hoopa Valley Tribe (and therefore actually used for distribution of the monies in question). Then he applied those standards to the group of plaintiffs, making changes needed to obviate "the factors wrongfully used to exclude the claimants from the distribution" and in part to conform to the different history of plaintiffs' group from that of the Hoopas. For details of the trial judge's determinations, we refer to his opinion. His summary of conclusions, which we affirm, is reproduced in the Appendix to this opinion. *See also* note 14, *infra*.<sup>11</sup> We discuss below the objections raised by the various parties to Judge Schwartz's conclusions.

#### A. *Plaintiffs-Appellants' Objections*

Judge Schwartz found that the Hoopas had separate schedules of membership, depending generally on the relationship of the individual to the Hoopa tribe or the Square (where the Hoopas lived) as of various dates (Schedules A,

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10. We reiterate, once again, that it has always been plain that this development of standards was solely for the purpose of determining the money judgments in this suit, not for other purposes of tribal membership or organization. *See* [App. 29-33] 661 F.2d at 154-55. *See also* part III, *infra*.

11. At the direction of the trial judge, the Government and the Hoopa Valley Tribe filed with the Court of Claims (on May 3, 1982) a list of the plaintiffs who defendants believe qualify under the five standards established by the trial judge (Attachments A through E). These lists were based on information previously supplied by plaintiffs. The joint list included 2161 plaintiffs [App. 214-51].

B, and C).<sup>12</sup> As we have said, he then formulated analogous groups of plaintiffs, as shown in the Appendix to our opinion (these were grouped into five Attachments).<sup>13</sup> The trial judge also indicated that individual plaintiffs, not included in one of these five groups, could subsequently seek qualification on the basis of "manifest injustice" and the individual's particular set of circumstances.

Plaintiffs challenge the composition of the trial judge's five groups, mainly on the ground that he should not have used the dates and some of the standards the Hoopas used because, it is said, those dates and standards were peculiar to events and circumstances in Hoopa history and immaterial to the history of the plaintiffs or of the Yuroks who did not

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12. In paraphrased summary, these Hoopa schedules were found to be:

Schedule A: Square allottees, or their descendants, living on October 1, 1949;

Schedule B: Indians living as of October 1, 1949, whose residence within the Square was not subject to question, who never received allotments but were generally considered as members of the Hoopa Valley Tribe and permitted to participate in tribal affairs, and their descendants living on October 1, 1949;

Schedule C: Indians residing within the Hoopa Valley Reservation for a minimum of 15 years, who had forebears born within the 12-mile square Hoopa portion of the Reservation, who had at least  $\frac{1}{4}$  degree Indian blood, and who filed an application within the 60-day period ending June 2, 1953.

13. In paraphrased summary, Judge Schwartz determined the following groups of plaintiffs to be qualified:

Attachment A: Allottees of the Reservation and their descendants living anywhere on the Reservation on October 1, 1949.

Attachment B: Residents of the Reservation (and their descendants) living on October 1, 1949, who have received Reservation benefits and services, and hold an assignment or can prove entitlement to an allotment.

Attachment C: Persons living on June 2, 1953 with at least  $\frac{1}{4}$  Reservation blood (defined to include a number of tribes connected with the Reservation) who had lived on the

live on the Square (the portion of the Hoopa Valley Reservation occupied by the Hoopas). There are two sets of plaintiffs represented by different counsel; between them they raise the following points: (1) census enrollees (on the whole Reservation) and their descendants should be considered fully equal to allottees (and their descendants) (Attachment A) for qualification purposes; (2) assignees and their descendants should also be considered fully equal to allottees on Attachment A; (3) Attachment B should include plaintiffs who did not live on the Reservation on October 1, 1949 (as well as those who did); (4) instead of the dates employed by the trial judge (Oct. 1, 1949) (used by the Hoopas); June 2, 1953 (also used by the Hoopas); August 9, 1963 (considered the commencement of the present suit), the most relevant date should be April 23, 1976, when the Court of Claims closed the class of plaintiffs; and (5) application of the Hoopa Valley Tribe's criteria of blood degree for those born after October 1, 1949 (see Attachments D and E) is error.

In appraising these points -- which were made before the trial judge and which he considered -- we are governed, as he was, by the fundamental premise, enunciated by the *en banc* Court of Claims in 1981 -- and of course binding on us -- that "the standards used to determine the membership of the Hoopa Valley Tribe"<sup>14</sup> also provide an appropriate basis

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Footnote 13 (Con't)

Reservation for 15 years prior to June 2, 1953 and have ancestors born on the Reservation.

Attachment D: Persons possessing at least  $\frac{1}{4}$  Indian blood and who were born after October 1, 1949 and before August 9, 1963 [the date the present action was commenced] to a parent who did qualify or would have qualified as an Indian of the Reservation under Attachments A, B or C, *supra*.

Attachment E: Persons born on or after August 9, 1963, of at least  $\frac{1}{4}$  Indian blood derived exclusively from a parent or parents who qualified under Attachments A, B or C, *supra*.

14. These standards were known in 1981 to the Court of Claims since they had been "described and explained" in the findings in the 1973

for determining which of the plaintiffs are Indians of the Reservation" entitled to recovery here. [App. 37-38] 661 F.2d at 158. Some leeway was allowed to the trial judge but the Hoopa Valley Tribe standards were to be the matrix. We cannot agree with plaintiffs' apparent views that major surgery, with profound alterations, was contemplated, or that the function of the trial judge, under the Court of Claims' 1981 decision, was basically to decide *de novo*, with some reference to the standards of the Hoopa Valley Tribe, who were "Indians of the Reservation." Moreover, in the limited area where the trial judge had leeway, it was recognized by the Court of Claims to be within his "sound discretion," [App. 38] 661 F.2d at 159, a discretion which he has exercised and which is subject to review here only for abuse. There is also one more general factor we must consider. The Court of Claims was very eager to bring this long-lasting case to its proper conclusion, and that was a prime reason it determined to follow the general outline of the existing Hoopa standards, *see* [App. 36-39] 661 F.2d at 157-159. Unnecessary further proceedings to determine qualification should therefore be avoided.<sup>15</sup>

In this light we reject plaintiffs' objections (as we do those of the Government and the Hoopa Valley Tribe, *see infra*). Judge Schwartz correctly framed his standards on the standards of the Hoopa Valley Tribe, and he did not abuse his discretion in refusing to make the further changes plaintiffs sought.

The refusal to include all assignees (and their descendants) on Attachment A (note 14, *supra*; Appendix, *infra*) was warranted because (1) Schedule A of the Hoopa list (note 13, *supra*) was definitely limited to allottees (and their descendants); (2) Attachment B of the trial judge's standards (note 14, *supra*; Appendix, *infra*) specifically takes account

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Footnote 14 (Con't)

decision. *See* [App. 37] 661 F.2d at 158. The trial judge did not misconstrue them in his opinion which we are reviewing. *See* Part II, C, 1, *infra*.

15. Of course, the same general principles apply to our review, *infra*, of the objections of the United States and the Hoopa Valley Tribe.

of those Indians holding assignments; and (3) the trial judge's opinion also expressly leaves open to any plaintiff "who can qualify only on the basis of an assignment held by the plaintiff or an ancestor" to argue in further proceedings that he is entitled to recover on the basis of "manifest injustice" (recognized by the Court of Claims, [App. 38] 661 F.2d at 158) in view of the facts of his individual case. These are good reasons for the judge's position. As for those who had (or whose forebears had) census enrollments (but neither allotments nor assignments), Judge Schwartz refused to consider that as a *per se* mark of qualification because (1) "though census enrollment bespeaks a tie to the Reservation, it does not establish an attachment to the Reservation equal to that of allotment, which is ownership of the land";<sup>16</sup> (2) some enrollees lived off the Reservation while residence was required for an allotment (or assignment); and (3) relief could be available under the "manifest injustice" standard by proof of census enrollment plus other adequate ties to the Reservation. Taken together, that is most certainly a sensible stance.

Use of the blood degree provisions of Hoopa Schedule C (note 13, *supra*), in formulating the trial judge's standards for Attachments C, D and E (note 14, *supra*; Appendix, *infra*), is also acceptable. That was an integral requirement for those Hoopas not on Schedules A and B, and therefore should be followed in trying to approximate those who would have appeared on those rolls for the distribution of the monies if those rolls had been properly prepared and not limited to Hoopas alone. So also for the general residence requirement for Attachment B (note 14, *supra*; Appendix, *infra*); that requirement was directly based on Hoopa Schedule B (note 13, *supra*) which undoubtedly called for residence on the Reservation.<sup>17</sup>

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16. Assignments were also directly related to land.

17. Similarly, the trial judge properly held that listing on Hoopa Schedule C (note 13, *supra*) did not carry with it automatic membership of those Indian children living on October 1, 1949. "The C children were themselves required for membership to have the Schedule C qualifications." Consistently, the judge carried this over into Attachments C, D and E (note 14, *supra*; Appendix, *infra*).

The most substantial of plaintiffs' objections relate to the use in the new standards of dates directly concerned with Hoopa history alone (October 1, 1949; June 2, 1953) and not otherwise pertinent to plaintiffs. But we cannot say that the trial judge erred in directly following the Hoopa standards, as the Court of Claims ordered him to do, or that he abused his discretion in refusing to employ later or other dates. The purpose of the exercise, for this case, is to pay to those plaintiffs, deprived by the Hoopa standards of proper payment, the share they would have been paid under those standards if those criteria had included all the Indians of the Reservation, not merely the Hoopas alone. To achieve that end, it is relevant to consider the dates actually used in determining to whom to pay out the monies in question. In particular, it would not be right to advance the date for qualification (as plaintiffs ask) to April 23, 1976, when the Court of Claims allowed no further plaintiffs to be added; that date has no connection whatever with the substantive issues the Court of Claims considered and which we are now considering.<sup>18</sup>

### B. *The Government's Objections*

The Government has five objections to the trial judge's standards, none of which we accept. We treat them in turn.

1. In view of Hoopa Schedule B (note 13, *supra*), the proposal is that the trial judge's Attachment B (note 14, *supra*; Appendix, *infra*) be modified to require additional factual proof and analysis (in further proceedings) of plaintiffs' participation in benefits and services before inclusion in Attachment B. Only in that way, the United States says, can it be known that plaintiffs included in

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18. In one of their reply briefs on the merits, plaintiffs point to two alleged minor "errors" in the trial judge's standards, and assert they were inadvertent and should be corrected. We are not certain those parts of Attachments B and E (note 14, *supra*; Appendix, *infra*) were inadvertent, but in any event we leave those plaintiffs excluded by these alleged errors to possible individual relief under the doctrine of "manifest injustice" if other facts show that those individuals should be included in the class entitled to recover.

Attachment B have a connection with the Reservation analogous to that of Hoopas listed in Schedule B. We think, however, that Attachment B, as now worded, is clearly analogous in its terms to Hoopa Schedule B and we leave it to the trial judge's discretion, on remand, to implement the general standard of Attachment B as he sees fit. It is needless, and surely would not advance this litigation to its conclusion, for us to mandate further particular proceedings if the trial judge properly believes that he can decide inclusion in Attachment B on the basis of the materials and information already available to him.

2. The United States disapproves of any consideration of assignments to plaintiffs (or their forebears) (see Attachment B, note 14, *supra*; Appendix, *infra*) because the Hoopa tribe did not use assignments in deciding who of that tribe's members should share in the disputed payments. We agree with the trial judge that this practice of the Hoopas is not controlling. It may not have been necessary for the Hoopas to use assignments, but it is nevertheless clear that the same qualifications were required for an assignment as for an allotment; it was scarcity of land at the time that accounted for the making of assignments instead of allotments. Both show attachment to the land. We have already rejected (see Part II, A, *supra*) plaintiffs' desire to place all assignees (along with allottees) in Attachment A. But that is no reason to differ with Judge Schwartz in his careful treatment of assignees in Attachment B, and also as possible part of proof showing "manifest injustice."

3. Objection is likewise made to the trial judge's contemplation that census enrollments can be used in connection with proof of "manifest injustice." See Part II, A, *supra*. But proof must in any case show adequate ties to the Reservation, and a census enrollment can certainly be one factor in that proof. There should be no automatic rule totally excluding such enrollments from being given any consideration in any case.

4. The Government takes exception to the inclusion of six Indian groups (Karok, Sinkyone/Sinkiene, Tolowa, Wintun,

Wiyot and Wailake/Wylackie) in the trial judge's concept of Reservation Indian blood for Attachments C, D and E (note 14, *supra*; Appendix, *infra*). The Government says that those six groups had inadequate connection with the Reservation. Though there may be evidence and material going the other way as to each of those six, there was also sufficient support for the trial judge's finding to require us to uphold it under the "clearly erroneous" standard.

5. Finally, the United States argues that no plaintiff who is a member of another tribe or band should be allowed to recover in this action. This is the plea for "disqualification by dual tribal status" that the trial judge expressly rejected. We agree with him. As Judge Schwartz carefully pointed out, there is no good proof that the Hoopas ever disqualified any Hoopa from receiving a share of the monies in question because of "dual membership." Nor do the Hoopas' official standards exclude Indians who have "dual membership" from sharing in the monies at issue here. In addition, there is no federal statute or regulation barring an Indian from receipt of federal funds simply because he is also a member of another Indian group. Those reasons are enough to refuse to introduce "dual membership" into the standards to govern plaintiffs' shares.<sup>19</sup>

### C. *The Hoopa Valley Tribe's Objections*

Cross-appellant Hoopa Valley Tribe (defendant-intervenor in the action) has raised a large number of objections (some of which are the same as the Government's) which amount *in toto* to rejection of almost all of the standards proposed by the trial judge. We do not agree that any of the Tribe's objections call for modification of the decision below.

1. The Tribe insists that Judge Schwartz erred in finding the Hoopa standards (Schedules A, B, C, note 13 *supra*) on

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19. We do not pass on the question whether a plaintiff "dual member" who accepts money in this case will then be barred from receiving other monies from different, separate tribes or groups. That is not an issue before us.

the basis of the written documents and refusing to find the "real" or "true" Hoopa standards on the basis of extraneous materials (such as current affidavits) proffered by the Tribe. The short and conclusive answer is that the trial judge's findings as to those standards (based on the official Hoopa constitution and resolutions, approved by the Secretary of the Interior) accord precisely with the 1973 findings of the Court of Claims, [App. 124-31] 202 Ct. Cl. at 959-67, which were confirmed by the Court of Claims in 1981, [App. 37] 661 F.2d at 158. That 1981 decision did not envisage that the trial judge would engage in a new study and new trial to determine for himself what were the "true" Hoopa standards. It follows that those of the Tribe's arguments that rest on the Tribe's current view of the "true" Hoopa standards cannot prevail. The most important of these positions is that Schedule A (note 13, *supra*) required residence on the Square on October 1, 1949, although the official Hoopa standards did not say so.<sup>20</sup> The same is true of the contention that Schedule A had some specific "Indian blood" requirement. Another is the contention that the residence mentioned in Hoopa Schedule C (note 13, *supra*) must be continuous and as such should be carried over to Attachment C (note 14, *supra*; Appendix, *infra*); there was simply no such requirement in the official Hoopa standards.

2. If the Tribe is still contending that the date for inclusion in Attachment A (note 14, *supra*; Appendix, *infra*) should be that the plaintiff (or perhaps his allottee forebear) was living on *October 1, 1919* (twenty-five years after allotments to non-Hoopas, just as 1949 was about twenty-five years after allotments to the Hoopas), that argument is obviously groundless. The court's effort is to mold for the non-Hoopa Indians of the Reservation the Hoopa standards used for distribution of the monies in the 1950's and 1960's (which of course used October 1, 1949), not to create a fantasy class

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20. The 1973 decision of the Court of Claims specifically found that residence was not required for inclusion on Schedule A. [App. 127] 202 Ct. Cl. at 963 (Fdg. 148).

along new and irrelevant lines which might seem "fairer" to certain people but much less "fair" to others.

3. Hoopa Schedule B (note 13, *supra*) employed subjective standards like "residence not subject to question," "generally considered as members of the Hoopa Valley Tribe," and "permitted to participate in tribal affairs." The trial judge substituted the objective criteria of Attachment B (note 14, *supra*; Appendix, *infra*), but the Hoopa Tribe urges that he should have included the same subjective criteria as the Hoopas put into Schedule B. This suggestion, too, is unacceptable. To avoid protracted further proceedings in this already too-prolonged litigation, objective criteria are necessary and preferable. Moreover, the kind of proof of "tribal participation" or "community acceptance" the Tribe desires cannot be obtained in the case of non-Hoopas of the Reservation. As the Court of Claims held in 1981, [App. 32-33] 661 F.2d at 155, (*see, also*, [App. 115-116] 202 Ct. Cl. at 950 (fdgs 109-110), [App. 117-118] 951-954 (fdgs 113-117), [App. 121-122] 957 (fdg 126), [app. 123-124] 958-59 (fdgs 132-135)), there was no similar tribal organization or entity for those non-Hoopas, and the non-Hoopas (excluded from the Hoopa Valley Tribe) could not have "participated" in such organizations. Conversely, there was no non-Hoopa tribal organization which could "generally consider" plaintiffs as "members" or "permit" them to "participate" in its affairs. (*See also* our discussion, Part I, B, *supra*, of the United States' exception with respect to further individual proof as to receipt of benefits and services.)

4. We also reject the Hoopa Valley Tribe's proposal that any plaintiff should be automatically disqualified if he or she was eligible for membership in the Hoopa Tribe in 1949 and either did not apply or was turned down. The Hoopa Tribe did not distribute applications to everybody who might be eligible [App. 124] (202 Ct. Cl. at 959-960 (fdg 137)), particularly to those who did not live on the Square, and it is indisputable that, in implementing its standards, the Tribe was anxious to exclude persons not considered by them to be Hoopas.

5. The Tribe's objections respecting assignments, census enrollment, the Indian groups to be considered in determining "Reservation blood," and "dual membership," are all essentially the same as those made by the Government, and our reasons for rejecting them are similar.<sup>21</sup>

To sum up, all parties' objections to the trial judge's standards and to his conclusions of law are disapproved.

### *III. Nature of our Decision*

At the close of our opinion we again stress - what the Court of Claims several times emphasized and we have interlaced *supra* - that *all* we are deciding are the standards to be applied in determining those plaintiffs who should share as individuals in the monies from the Hoopa Valley Reservation unlawfully withheld by the United States from them (from 1957 onward). This is solely a suit against the United States for monies, and everything we decide is in that connection alone; neither the Claims Court nor this court is issuing a general declaratory judgment. We are *not* deciding standards for membership in *any* tribe, band, or Indian group, *nor* are we ruling that Hoopa membership standards should or must control membership in a Yurok tribe or any other entity that may be organized on the Reservation. We fully agree with Judge Schwartz that "[s]hould the Yuroks decide to establish a tribe, they are free to vote any membership standard they desire" and we "are not deciding what shall be the membership of a Yurok tribe or of any Indian tribe." We also agree with him "that the decision reached in this court [both the Claims Court and the Court of Appeals for the Federal Circuit] will obtain only for the years until final judgment, and for the years to come while the situation in the Reservation remains the same subject of course to births and deaths."

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21. The belated contention of the Hoopa Valley Tribe that plaintiffs, to receive monies under 25 U.S.C. § 407 (related to payments from the fruits of unallotted lands), must be members of an organized Indian entity is unacceptable for reasons given in Part I, B, *supra*, in our discussion of the relationship between 25 U.S.C. § 407 and the current jurisdictional issue.

We note, finally, our fervent hope that this very old case will speedily be concluded in the light of the trial court's judgment now affirmed in its entirety by this court. The case will be remanded to the Claims Court for further proceedings in accordance with this opinion.

*Affirmed and Remanded.*

## APPENDIX

The trial judge's ultimate decision ("Conclusion of Law") was as follows:

"For the reasons set out in the foregoing [opinion], it is concluded that the plaintiffs of the following classes are qualified as Indians of the Hoopa Valley Reservation and are therefore entitled, equally with all others qualified, to shares of the profits of the unallotted trust lands of the Reservation. Judgment is given for these plaintiffs, against the Government and the intervening defendant-Tribe, the payor and recipient of sums due the plaintiffs, of the sums payable, the amounts to be ascertained in further proceedings under [then Court of Claims rule 131(c)]:

1. Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949.

This class is composed of plaintiffs on attachment A, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 214].

2. Persons living on October 1, 1949, and resident on the Reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment, they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949.

This class is composed of plaintiffs on attachment B, which is to be a part hereof and to be furnished to the Clerk, to

the extent practicable, by defendants jointly, within 30 days of this order.

3. Persons living on June 2, 1953, who have at least  $\frac{1}{4}$  Reservation blood, as defined below, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953.

This class is composed of plaintiffs on attachment C, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 236].

4. Plaintiffs of at least  $\frac{1}{4}$  Indian blood, born after October 1, 1949 and before August 9, 1963 to a parent who is or would have been, when alive, a qualified Indian of the Reservation under any of the foregoing paragraphs 1, 2 or 3, or has previously been held entitled to recover in this case.

This class is composed of plaintiffs on attachment D, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 237].

5. Plaintiffs born on or after August 9, 1963, who are of at least  $\frac{1}{4}$  Indian blood, derived exclusively from the qualified parent or parents who is or would have been when alive a qualified Indian of the Reservation under any of the foregoing paragraphs 1, 2 or 3, or has previously been held entitled to recover in this case.

This class is composed of plaintiffs on attachment E, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 249].

6. Reservation blood, as used herein, shall mean the blood of the following tribes and bands: Yurok, Hoopa/Hupa; Grouse Creek; Hunstang/Hoonsotton/Hoonsolton; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Non-gatl/Siahs; Sermalton; South Fork; Tish-tang-atan; Karok; Tolowa; Sinkyone/Sinkiene; Wailake/Wylacki; Wiyot/Humboldt; Wintun.

7. The motions for summary judgment of all plaintiffs not listed on attachments A, B, C, D and E are denied, without prejudice to renewal within three months after this order becomes final, on a certification by counsel of record to the best of his belief, that the facts summarized in the motion, and to be determined on oral or written hearing, demonstrate either the qualification of the plaintiff under one of the standards adopted by the court or that the denial of qualification of the plaintiff would on the special facts of the case be manifestly unjust.

8. The furnishing by defendants of the above-mentioned attachments A, B, C, D, and E, shall be without prejudice to the rights of defendants to challenge this decision or any part thereof. Recently substituted and former counsel for defendant Hoopa Valley Tribe are expected to cooperate so that no time will be lost in the preparation of the lists to become attachments A-E hereto. Defendants are to furnish the Clerk with the original and 12 copies of each of these attachments.

9. The plaintiffs' motions for summary judgment are denied and granted as provided above."

## APPENDIX B

## In the United States Court of Claims

No. 102-63

(Decided September 23, 1981)

JESSIE SHORT, et al.

v.

THE UNITED STATES, Defendant, and  
HOOPA VALLEY TRIBE OF INDIANS, Defendant-  
Intervenor

*Harold C. Faulkner*, attorney of record, and *William C. Wunsch, Weyman I. Lundquist, and William K. Shearer*, for certain plaintiffs. *Wallace A. Sheehan, Faulkner, Sheehan & Wunsch, and Heller, Ehrman, White & McAuliffe*, of counsel.

*Clifford L. Duke, Jr.*, attorney of record for certain plaintiffs. *Bryan R. Gerstel* and *William K. Shearer, Duke & Gerstel*, of counsel.

*James E. Brookshire*, with whom was *Acting Assistant Attorney General Anthony C. Liotta*, for defendant. *Duward R. Barnes*, Department of the Interior, of counsel.

*Jerry C. Straus*, attorney of record for defendant-intervenor. *Edward M. Fogarty, Jerry R. Goldstein, and James A. Michaels, Wilkinson, Cragun & Barker*, of counsel.

Before *FRIEDMAN*, Chief Judge, *DAVIS*, Judge, *SKELTON*, Senior Judge, *NICHOLS*, *KUNZIG*, *BENNETT* and *SMITH*, Judges, *en banc*.

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ON REQUEST FOR REVIEW OF TRIAL JUDGE'S OPINIONS  
DENYING DEFENDANT'S MOTION TO SUBSTITUTE AND  
DEFENDANT-INTERVENOR'S MOTION TO DISMISS

FRIEDMAN, *Chief Judge*, delivered the opinion of the court:

In this suit, some 3,800 individuals who claim to be Indians of the Hoopa Valley Indian Reservation in Northern California (the Reservation) seek to recover their shares in the income from the sale of Reservation timber that the government distributed exclusively to another group of Indians of the Reservation. In *Short v. United States*, 202 Ct. Cl. 870, 486 F.2d 561 (1973), *cert. denied*, 416 U.S. 961 (1974) (the 1973 decision), we held the government liable to qualified Indians of the Reservation who were entitled to but did not receive shares in this income, and we rendered judgment in favor of 22 individual plaintiffs who had proved their entitlement. We also permitted the Hoopa Valley Tribe, the group of Indians to whom the government theretofore had distributed the timber income exclusively, to intervene as a party defendant.

The case is now before us on requests for review by the United States and the Hoopa Valley Tribe (collectively, the defendants) of two decisions of Trial Judge Schwartz denying (i) the United States' motion to substitute for the plaintiffs as the real party in interest an entity called the Yurok Tribe, and (ii) the Hoopa Valley Tribe's motion to dismiss the suit on the ground that it involves nonjusticiable political questions. The government states that if its motion to substitute is denied, it then joins in the motion to dismiss. We agree with and affirm the trial judge's decisions.

I.

A. The facts relevant to the case's present posture, which we briefly review here, were the subject of extensive findings in our 1973 decision. See 202 Ct. Cl. at 885-987, *passim*.

The timber revenues at issue derive from unallotted, trust-status lands on a portion of the Reservation known as the Square. This is an area 12 miles square, which constituted the entire original Hoopa Valley Reservation when that reservation was established in 1864. Fdgs. 10-21, 202 Ct. Cl. at 888-99. An area contiguous to the Square, inhabited then as now primarily by Yurok Indians and known as the Addition, was added to the Reservation in 1891. Fdgs. 33-34, 202 Ct. Cl. at 902-03.

In 1950, the Indians of the Square established an organization known as the Hoopa Valley Tribe (fdg. 145, 202 Ct. Cl. at 962), whose membership excludes the plaintiffs. Fdg. 143, 202 Ct. Cl. at 961. Beginning in 1955, the Secretary of the Interior, pursuant to requests by the Hoopa Valley Tribe's Business Council, distributed the revenues from the timber sales annually in per capita payments to the Indians on the official roll of the Hoopa Valley Tribe, to the exclusion of the Indians of the Addition. Fdgs. 171, 173, 202 Ct. Cl. at 971-72, 973. The Secretary took this action on the basis of an opinion of the Solicitor of the Department, 65 Dec. Dep't Int. 59 (1958), *reprinted in 2 U.S. Department of the Interior, OPINIONS OF SOLICITOR OF THE DEPARTMENT OF THE INTERIOR RELATING TO INDIAN AFFAIRS, 1917-1974*, at 1814, that the Square and the Addition were separate reservations. Fdg. 174, 202 Ct. Cl. at 973. Between 1955 and February 1969, these payments totaled approximately \$12,650,000. Fdg. 172, 202 Ct. Cl. at 972.

In 1963, the plaintiffs, each of whom claims to be an Indian of the Addition area of the Reservation, brought this suit against the United States, as trustee and administrator of the timber resources of the Reservation, seeking their shares of the revenues the government had distributed to individual Indians of the Reservation. Following a trial and after briefing and oral argument, we held in 1973 that the Secretary's treatment of the Square and the Addition as separate reservations in which the Indians of each had exclusive rights to the resources of their area was erroneous. 202 Ct. Cl. at 884-85, 486 F.2d at 567-68. Adopting the trial judge's opinion and detailed findings (202 Ct. Cl. at 872-73, 486 F.2d at 561), we held that the Square and the Addition together constituted a single reservation, that all the Indians of that Reservation were entitled to share in all

of its revenues that were distributed to individual Indians (including the timber revenues from the Square), and that the plaintiffs who were Indians of the Reservation were entitled to recover the monies the government withheld from them. Fdgs. 188-89, 202 Ct. Cl. at 980-81.

We also ruled that 22 of 26 named individual plaintiffs, whose cases had been chosen as representative of the plaintiff group, *see* 202 Ct. Cl. at 874, 486 F.2d at 562, had established that they were Indians of the Reservation. 202 Ct. Cl. at 885, 486 F.2d at 568; fdgs. 191-217, 202 Ct. Cl. at 982-87. We held that these 22 plaintiffs "are entitled to recover, as Indians of the Hoopa Valley Reservation, an aliquot share in the revenues of the unallotted trust-status lands of the entire reservation . . . , the amount of recovery to be determined following trial of the claims of the remaining plaintiffs." Fdg. 217, 202 Ct. Cl. at 987. We remanded the case for a retrial of the claims of the four remaining representative plaintiffs and a determination of the rights of the remaining plaintiffs to recover. 202 Ct. Cl. at 873, 885, 987-88, 486 F.2d at 561, 568.

The Supreme Court denied petitions for certiorari filed by the Hoopa Valley Tribe and the United States. 416 U.S. 961 (1974).

B. Since our 1973 decision, the parties and this court have taken a number of steps looking toward the determination and identification of the Indians of the Reservation who are entitled to recover.

In 1976, we permitted 515 additional persons to intervene as plaintiffs as of the time the suit was instituted, thus increasing the number of plaintiffs to approximately 3,800. We also closed the class. *Short v. United States*, 209 Ct. Cl. 777 (1976).

Each plaintiff then filled out a life-history questionnaire developed and agreed upon by the parties. *See Hoopa Valley Tribe v. United States*, 219 Ct. Cl. 492, \_\_\_, 596 F.2d 435, 439 (1979). Between September 1976 and May 1977, at the behest of the trial judge, the parties filed successive cross-motions for summary judgment for and against some 3,200 plaintiffs. We referred these motions to the trial judge for recommended decision. *Short v. United States*, 212 Ct. Cl. 522 (1976). With the consent of the defendants, we granted summary judgment for 121 additional plaintiffs whose

status as Indians of the Reservation the defendants did not contest. *Short v. United States*, No. 102-63 (orders entered December 3, 1976, February 25, 1977, and April 27, 1978).

The trial judge has not issued any recommended decisions on the remaining cross-motions for summary judgment because of (i) protracted but unsuccessful efforts to settle the case and (ii) the filing of the motions before us.

## II.

### *The Motion to Substitute*

A. After efforts to settle this case failed, the trial judge in September 1978 reconvened proceedings on the pending summary judgment motions. Shortly before a scheduled status conference to determine the course of proceedings, the government began efforts to organize a Yurok Tribe.

In November 1978, 15 days before the status conference, the Assistant Secretary for Indian Affairs of the Department of the Interior issued a letter to the plaintiffs in this case and to all members of the Hoopa Valley Tribe announcing a plan to organize a Yurok Tribe as the "first step" for "resolv[ing] the dispute over the use and benefit of the Hoopa Valley Reservation and remov[ing] the impediments to self-determination" on the Reservation.

The Assistant Secretary stated that he intended to conform to this court's 1973 decision by "designat[ing] the Hoopa Valley Tribe and the Yurok Tribe as the Indians of the Reservation who are entitled to use and benefit from the Reservation and its resources." Since no Yurok tribal organization existed and the membership of the Tribe was not established, the Assistant Secretary announced that the Interior Department would initiate organization of a Yurok Tribe.

In December 1978 and March 1979, the Interior Department proposed a set of qualifications for developing a list of persons entitled to vote in the election of an "Interim Yurok Governing Committee" that would draw up a tribal constitution for submission to the voters. 44 Fed. Reg. 12,210 (1979); 43 Fed. Reg. 60,670 (1978). In May 1979, the Department proposed rules for the conduct of this election. 44 Fed. Reg. 31,156 (1979). These proposals engendered

considerable opposition by the potential voters. In written comments and at government-sponsored public meetings held on or near the Reservation, they objected to organizing a tribe at all before conclusion of this lawsuit. In spite of these objections, in April and August 1979, the Interior Department published final regulations establishing qualifications for voters, 44 Fed. Reg. 24,536 (1979), and procedures for conducting the election. 44 Fed. Reg. 46,269 (1979). See 25 C.F.R. Parts 55, 55a (1980). The Interior Department then circulated nominating petitions and mailed out ballots.

Some of the plaintiffs in this action brought suit against the Secretary of the Interior to enjoin the election. The case was dismissed without prejudice upon the government's agreement not to conduct any election of a temporary or permanent governing body, a constitution drafting committee, or any other body purporting to be representative of the voters, "without first conducting a referendum in accordance with law in which the voters approve of such an election taking place." *Beaver v. Secretary of the Interior*, Civ. No. 79-2925 (N.D. Cal., Feb. 11, 1980).

In the ensuing referendum in which the Indians were asked to state whether they favored "establishment of an Interim Yurok Governing Committee," 1,909 voted against it and 65 in favor. All the plaintiffs were eligible to vote in that referendum. See 45 Fed. Reg. 49,224 (1980) (to be codified in 25 C.F.R. Part 55b).

B. In May 1979, while the government's efforts to organize a Yurok Tribe were pending, the United States filed a motion to substitute the Yurok Tribe for the 3,800 individual plaintiffs. The theory of this motion is that the Reservation and its resources are tribal property rather than the common property of the individual Indians and that only a tribe composed of non-Hoopa Indians and not any individual Indian has a right to recover the proceeds of the timber sales. The defendant recognizes that there is no existing organizational or functional tribal entity. It urges, however, that the Yurok Tribe has existed for many years as a conceptual entity and suggests that if the motion to substitute is granted, the individual Yurok Indians soon will create an appropriate tribal organization.

The trial judge denied the motion primarily on the ground that all of the issues it raises have been rejected repeatedly during this litigation—and particularly in our 1973 decision.

C. The government argues that substitution of the Yurok Tribe for the individual plaintiffs would not be inconsistent with our 1973 decision because that decision did not determine that any individual Indian could recover, but only that the Square and the Addition are parts of a single reservation, the resources of which the government must use for the common benefit of the Indians of the tribes settled there.

To the contrary, our 1973 decision firmly and unequivocally held that individual Indians are entitled to recover. We explicitly stated that "[s]uch of the plaintiffs as are found herein to be Indians of the reservation will become entitled to share in the income from the entire reservation including the Square . . ." Fdg. 189, 202 Ct. Cl. at 981. We granted summary judgment for the 22 plaintiffs whom trial had shown to be Indians of the Reservation, ruling that they "are entitled to recover in amounts to be determined under Rule 131(c) . . ." 202 Ct. Cl. at 873, 486 F.2d at 561; see 202 Ct. Cl. at 885, 486 F.2d at 568; fdg. 217, 202 Ct. Cl. at 987. We reaffirmed that holding when we subsequently granted summary judgment for the 121 additional plaintiffs whose status as Indians of the Reservation the government did not challenge. *See supra*, pp. 4-5.

D. Our 1973 decision that the individual Indians are entitled to recover is the law of the case. As we explained in *United States v. Turtle Mountain Band of Chippewa Indians*, 222 Ct. Cl. \_\_\_, 612 F.2d 517 (1979), quoted with approval in *Northern Helex Co. v. United States*, 225 Ct. Cl. \_\_\_, 634 F.2d 557, 561 (1980), under that doctrine "as a matter of sound judicial practice, a court generally adheres to a decision in a prior appeal in the same case unless one of three 'exceptional circumstances' exists: 'the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and works a manifest injustice.'" 222 Ct. Cl. at \_\_\_, 612 F.2d at 521. The government argues that we

should not follow our 1973 decision because it comes within the last exception.

As we pointed out in *Northern Helex, supra*, 225 Ct. Cl. at \_\_\_\_, 634 F.2d at 562, however:

The standard under this exception is a stringent one. As we stated in *Turtle Mountain Band*: "The purpose of the law-of-the-case principle is to provide finality to judicial decisions. A strong showing of clear error therefore is required before a court should reexamine its decision in the prior appeal." 222 Ct. Cl. at \_\_\_, 612 F.2d at 521. A mere suspicion of error, no matter how well supported, does not warrant reopening an already decided point. *See id.* Only if we were convinced to a certainty that our prior decision was incorrect would we be warranted in now reexamining [it].

The government has not made a "strong showing of clear error" in our 1973 decision or "convinced [us] to a certainty" that it was wrong. We therefore decline to reconsider it. Indeed, to the extent that we have reexamined the 1973 decision in reaching this conclusion, we are satisfied that that decision was correct.

In our 1973 decision, we found that the effect of the 1891 Executive Order combining the Square and the Addition "was to create an enlarged reservation in which the Indians of the original reservation and the Indians of the added tracts would have equal rights in common" (fdg. 183, 202 Ct. Cl. at 976), and that "the effect of the executive order of 1891 was that all the Indians of the reservation as thereby extended—Addition and Square—got equal rights in the enlarged reservation . . . ." Fdg. 188, 202 Ct. Cl. at 980. Our ultimate finding was that the government "acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to the income from the unallotted trust-status lands on the Square." Fdg. 189, 202 Ct. Cl. at 980-81. It follows from that conclusion that individuals whom the Secretary arbitrarily excluded from *per capita* distributions have the right to recover.

Thus, as the trial judge pointed out in his opinion on the political question issue, "this is a case in which claimants are seeking the vindication of individual Indian rights" (slip

op. at 17), not of tribal rights. Indeed, despite the existence of the Hoopa Valley tribal organization, the Secretary "disbursed" from the timber receipts "per capita payments to the Indians on the official roll of the Hoopa Valley Tribe . . ." Fdg. 171, 202 Ct. Cl. at 971. The Secretary thus recognized that payment of the timber revenues on an individual (rather than a tribal) basis was an appropriate method of distribution, and was not in conflict with any concept of tribal ownership of trust-status lands.

Unlike the Hoopa Valley Indians, who had a tribal organization, there was no functioning entity that could have acted for the non-Hoopa Indians of the Reservation either when non-Hoopa Indians filed this suit in 1963, or when we ruled in 1973 that all the Reservation Indians had an interest in all the Reservation property. It was therefore not only appropriate, but necessary, that the present suit be brought by individual Indians.

In sum, the government has not demonstrated any error, let alone clear error, in our 1973 decision that the individual non-Hoopa Valley Indians of the Reservation are entitled to share in the revenues derived from the sale of timber on the Square.

E. The government also urges that substituting the Yurok Tribe for the individual plaintiffs would facilitate the disposition of this case. Assuming, *arguendo*, that this is a valid reason for departing from the law of the case (a highly dubious assumption), the argument is unconvincing.

The government asserts that the substituted Yurok Tribe could continue to prosecute this suit to a quick conclusion and that the money judgment in favor of the Tribe would be distributed, pursuant to the Indian Judgment Funds Distribution Act, 25 U.S.C. §§ 1401, *et seq.*, according to a plan to be formulated by the Secretary of the Interior and supervised by Congress. The government recognizes, however, that there is no functioning Yurok tribal organization. As noted, the Yuroks overwhelmingly rejected the government's attempt to organize a tribe. *See supra*, p. 6. The problems that substitution of such a nonfunctioning entity for the present plaintiffs would create suggest that the more probable effect of the government's proposal would be to delay further rather than to expedite the ultimate disposition of this case.

How would a Yurok Tribe without any functional organization and without tribal leadership conduct the litigation? Who would represent it? Would the tribe retain the lawyers who represent the plaintiffs? Perhaps, but perhaps not. The chaotic situation that the government's proposal would be likely to produce is reminiscent of the government's uncertainty that prompted it earlier in this litigation to insist that all the individual claimants be identified and made parties rather than permitting the suit to proceed in a representative capacity. See pretrial conference memorandum of May 31, 1966. Since there is no way of knowing whether the plaintiffs would accept the government's suggested form of tribal organization, what other form that organization might take, or how long such organization might require, substitution hardly seems a promising method of expediting this litigation.

Moreover, the substitution of the Yurok Tribe as the plaintiff would not avoid the need for this court to ascertain who were the Indians of the Addition when the timber proceeds were distributed. Accomplishing the latter objective would require us to overrule a further portion of our 1973 decision and a 1979 decision.

In 1973, we held that each of the Indians of the Reservation was "entitled to share . . . equally with all other such Indians" in the proceeds of the timber sales distributed to individual Indians. *Fdg. 189*, 202 Ct. Cl. at 981. Several years later, the Hoopa Valley Tribe sought to prevent the government from sequestering 70 percent of the annual timber income pending the final decision in this case, contending that the Indians of the Reservation were entitled to timber revenues "based on [the] respective [population] share of each group in 1891" which was "approximately equal."

We held that the Hoopa Valley Tribe was barred by *res judicata* "from seeking to raise the issues of the ratio of division of revenues between Hoopas and Yuroks . . ." *Hoopa Valley Tribe v. United States*, 219 Ct. Cl. 492, \_\_\_, 596 F.2d 435, 447 (1979). We stated that our 1973 decision held that "all the revenues were to be divided by the number of Indians of the Reservation and that the resulting shares were to be those of the individual Indians, respectively." *Id.* at \_\_\_, 596 F.2d at 447.

The defendants have not demonstrated that those rulings were erroneous, and we decline to reconsider or change them. The Hoopa Valley Tribe's present contention that the timber sale revenues should be divided 50-50 between the Hoopa Valley and the Yurok Tribes as tenants-in-common does not warrant a change in our previous decisions that those revenues are to be divided per capita among all the Indians of the Reservation.

### III.

#### *The Motion to Dismiss*

The Hoopa Valley Tribe has moved to dismiss all the individual claims on the ground that they involve nonjusticiable "political" questions. The United States joins in the motion if, as we have done, we reject its motion to substitute. The defendants contend that, under *Baker v. Carr*, 369 U.S. 186, 217 (1962), there are no "judicially discoverable and manageable standards"—one of the indicia of a political question—for us to apply in determining who are Indians of the Reservation. Therefore, the argument runs, it is for Congress and the Executive branch, but not for the courts, to make that determination.

In denying the motion, the trial judge correctly pointed out that its substance, although not in its precise present form, had been urged upon us several times in this case, that we have rejected the contention repeatedly, and that the defendants have given no convincing reasons why we should now reach a different conclusion. The trial judge also correctly noted that if the motion raises a new issue, the defendants have not given an adequate explanation for their 17-year delay in filing it. Finally, the trial judge discussed at considerable length the merits of the contention and found them unpersuasive. Although we agree with the trial judge's opinion, we find it necessary to discuss only his first ground of decision, since, in our view, that is dispositive.

As the trial judge pointed out, this is not a new contention. In a motion to dismiss filed in 1963, the government argued that the task of identifying the individuals entitled to share in the timber income was "subject to

the plenary power of Congress and . . . not a judicial matter." We denied the motion to dismiss the entire case, but granted it with respect to two of the plaintiffs' claims, which are irrelevant to the case in its present status. *Short v. United States*, No. 102-63 (order entered April 24, 1964).

In a joint brief submitted in the 1973 case, the defendants asserted that "the power to determine membership in a tribal entity for the purpose of resolving entitlement to tribal property resides squarely with Congress, or with the tribe, subject to the approval of the Secretary of the Interior." In their exceptions to the trial judge's recommended findings there that 22 specific individual plaintiffs had proved that they were Indians of the Reservation, the defendants stated that, in his recommended decision, the trial judge had "been unable to propose reasonable standards" for determining which of the plaintiffs were entitled to judgments, and urged that "such complex determinations are reserved for administrative officials, such as the Secretary of the Interior . . ." This contention is virtually identical to the one the defendants now make. In holding that the 22 plaintiffs were entitled to recover, our 1973 decision necessarily rejected that contention.

The Hoopa Valley Tribe asserts that those earlier arguments were directed only to the question of jurisdiction over the subject matter of this suit, but not to its nonjusticiability. The government's petition for certiorari seeking review of our 1973 decision, however, recognized that that decision rejected the assertion that the case was nonjusticiable. Citing *Baker v. Carr*, *supra*, the leading decision on the political question doctrine, the petition contended that our 1973 decision "unduly interferes with the authority of the political branches of the government to recognize tribal membership and tribal jurisdiction," which are "question(s) of judgment for the political branches to decide . . ."

Although there are significant doctrinal differences between jurisdiction and justiciability, the arguments the defendants now make in support of dismissal for nonjusticiability are the same ones they previously made in support of dismissal for lack of jurisdiction. Both arguments essentially are that this case requires the decision of questions within the exclusive province of the political branches of the government. Our prior decisions rejecting those conten-

tions are the law of the case. Here, as in the motion to substitute, the defendants have not shown that our prior decisions were clearly erroneous or, indeed, erroneous at all. To the extent that the defendants argue that the problems that have developed in formulating guidelines for determining who are Indians of the Reservation demonstrate the error of those prior decisions, our discussion in part IV of this opinion (*infra*, pp. 13-16) of the appropriate guidelines shows that there are "judicially discoverable and manageable standards" for deciding this case.

#### IV.

##### *The Further Proceedings in This Case*

This suit was begun in 1963 and, except for cases transferred to us from the Indian Claims Commission, it is the oldest case on our docket. The trial judge has been struggling valiantly, vigorously, and conscientiously for more than seven years to formulate standards for determining who are Indians of the Reservation. Substantial progress has been made, including the filing of detailed personal questionnaires and of voluminous motions for summary judgment with respect to most of the plaintiffs. Unfortunately, the proceedings have been seriously delayed for a number of reasons, over which the trial judge had no control, including the present motions, which have been pending for more than two years.

In his opinion dealing with the political question issue, the trial judge stated that the issue of the standard for identifying Indians of the Reservation is "both difficult and novel" (slip op. at 18), and that "[a]mong the pending matters" on the motions for summary judgment is the question of utilizing "such sources of assistance to the court as the employment of a court-appointed expert and invitations to appropriate organizations to appear as *amici curiae* on the issue of the appropriate qualifications for an Indian of the reservation." (Slip op. at 19). Those procedures would further delay the case and we see no need to utilize them.

Under our order referring the motions for summary judgment to the trial judge, he ordinarily would initially formulate the standard for determining the Indians of the

Reservation. We have determined, however, that in order to expedite this case, we should now ourselves undertake the task. In doing so, fortunately we need not write upon a clean slate.

The timber revenues that the Secretary distributed to individual Hoopa Indians beginning in 1955 were paid to those persons whom the Hoopa Business Council had determined to be members of the Tribe. In our 1973 decision, we found that the Hoopa Business Council in 1948 undertook to compile "a current roll of the Indians of . . . the Square, for the purpose of controlling the revenues from the resources of the reservation as so defined." Fdg. 136, 202 Ct. Cl. at 959. In determining the membership of the Hoopa Tribe (to whom the Secretary made the payments), the Hoopa Business Council used a detailed and carefully drawn set of standards. We described and explained those standards in the findings in our 1973 decisions. Fdgs. 137-45, 148, 152(c), 155-56, 202 Ct. Cl. at 959-67. The Secretary approved both the Hoopa constitution (which specified the standards for membership in the Hoopa Valley Tribe, fdg. 145, 202 Ct. Cl. at 962) and two schedules which listed most of the Indians who had been determined to be members of the Tribe. Fdg. 153, 202 Ct. Cl. at 964.

Although the situation of the Hoopas and the plaintiff Yuroks may not be precisely the same, we conclude that the standards used to determine the membership of the Hoopa Valley Tribe also provide an appropriate basis for determining which of the plaintiffs are Indians of the Reservation. The timber revenue payments were made to those Hoopas who, on the basis of those standards, had been determined to be Indians of the Reservation as the Secretary then viewed that area, *i.e.*, solely the Square. We held in 1973 that "Indians of the Reservation" were not limited to those of the Square, but also included those of the Addition. The bases that originally were used to determine the Indians of that portion of the Reservation, and which the Secretary of the Interior used in his decision on how to distribute the timber profits for the benefit of the Indians of the Reservation, are no less appropriate to determine the additional persons whom we have held are also Indians of the Reservation.

Indeed, the Interior Department recognized this fact when it attempted to organize a Yurok Tribe. In his message to the Hoopas and Yuroks proposing the organization plan (see *supra*, p. 5), the Assistant Secretary for Indian Affairs stated that the Yurok's "membership standards and criteria" should "[t]o the extent possible . . . be constructed along lines similar to those used during the construction of the membership of the Hoopa Valley Tribe . . ." See 44 Fed. Reg. 12,210 (1979). The Assistant Secretary suggested not only that the Yurok membership roll would be developed according to procedures similar to those used by the Hoopa Valley Tribe, but that similar membership standards would result. He anticipated, for example, "that members of both Tribes will include some Indian people who are not necessarily of Hoopa or Yurok blood."

In any case such as this, where it is necessary to formulate standards for determining the membership of a large class, probably it is impossible to achieve workable and manageable criteria that can be easily applied and that also will produce the correct result in every situation. There is need for some flexibility, so that recognition can be given to the small number of cases in which the standards cannot be strictly applied or in which their strict application would produce manifest injustice. Moreover, there may be differences between the situations of the Hoopas and the Yuroks that necessitate some differences in the standards governing the membership of the two Tribes.

The Hoopa Tribe standards, however, provide an appropriate guideline and basis for determining which of the plaintiffs are entitled to share in the timber payments because they are Indians of the Reservation. Those are the standards the trial judge basically should apply in deciding the question. We leave it to the trial judge's sound discretion to determine what, if any, changes should be made in the Hoopa standards and in the application of the governing standards in individual cases. We have every confidence that the trial judge, with his long experience and complete familiarity with this case, will be able to formulate and apply those standards to produce a just and fair result.

The task the trial judge must perform upon the remand we are ordering will be difficult and time-consuming. We

believe, however, that within six months he should be able to render a recommended decision that in a single document will announce the governing standards and apply them to those of the plaintiffs' cases that are ripe for decision. We take comfort from the statements by the plaintiffs' counsel at oral argument that the Hoopa standards would be appropriate to apply in this case and that their use would permit a prompt completion of this litigation.

#### CONCLUSION

The decisions of the trial judge denying the motions of the defendant to substitute the Yurok Tribe for the individual plaintiffs' and of the defendant-intervenor to dismiss the suit are affirmed, and those motions are denied. The case is remanded to the trial judge to issue by April 1, 1982, a recommended decision determining, under standards he will formulate in accordance with this opinion, which of the plaintiffs whose cases are ready for disposition are Indians of the Reservation.

## APPENDIX C

## In the United States Court of Claims

No. 102-63

(Decided October 17, 1973)

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JESSIE SHORT, ET AL. v. THE UNITED STATES

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*Harold C. Faulkner*, attorney of record, and *William C. Wunsch*, for plaintiff. *Wallace Sheehan and Faulkner, McCormish & Wunsch*, of counsel.

*Herbert Pittle*, with whom was *Assistant Attorney General Harlington Wood, Jr.*, for defendant.

*Jerry C. Straus*, for *Hoopa Valley Tribe*, *amicus curiae*. *Wilkinson, Cragun & Barker*, *Angelo A. Iadarola*, *Richard A. Baenen* and *Alan I. Rubinstein*, of counsel.

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Before *COWEN*, *Chief Judge*, *LARAMORE*, *Senior Judge*, *DAVIS*, *SKELTON*, *NICHOLS*, *KUNZIG* and *BENNETT*, *Judges*.

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## OPINION

PER CURIAM: This case comes before the court on defendant's exceptions to a recommended decision filed May 22, 1972, by Trial Judge David Schwartz pursuant to Rule 134 (h). The court has considered the case on the briefs and oral arguments of counsel for the parties and the *amicus curiae*. The court agrees with the decision as hereinafter set forth, rejects the objections and exceptions of defendant and *amicus*, and hereby affirms and adopts the decision as the basis for its judgment in this case. Insofar as defendant and *amicus curiae* have presented arguments to the court which differ from those presented to the trial judge, the court has considered them but does not deem any change in the trial judge's

opinion or findings is called for. The court has, however, excised from the findings the trial judge's notes which he indicates were not intended as findings.

Subsequent to the trial judge's decision and the oral argument before the court, the Supreme Court decided *Matts v. Arnett*, 412 U.S. — (June 11, 1973). We consider the trial judge's opinion and findings, and our decision herein, to be fully consistent with the opinion and decision in that case. Although the ultimate issues in the two cases are different, several aspects of the Supreme Court's opinion tend substantially toward supporting our holding in the present case.

It is concluded, therefore, that certain of the plaintiffs are entitled to recover in amounts to be determined under Rule 131(c), and the claims of the others are set down for retrial, as provided in findings 217-218. The case is remanded to the trial judge for further proceedings. The motion of the Hoopa Valley Tribe to intervene is granted.

#### OPINION OF TRIAL JUDGE

*SCHWARTZ, Trial Judge:* In 1876 a 12-mile square tract of land in Northern California, on the last reach of the Trinity River before it joins the Klamath River, was set aside by order of President Grant as the Hoopa Valley Indian Reservation. Most but not all of the Indians of the tract, called the Square, were and have been Hoopa Indians. In 1891 President Harrison made an order extending the boundaries of the reservation to include an adjoining 1-mile wide strip of land on each side of the Klamath River, from the confluence of the two rivers to the ocean about 45 miles away (in consequence of which the reservation took on the shape of a square skillet with an extraordinarily long handle). Most of the Indians of the added tract, called the Addition, were and have been Yurok Indians, also known as Klamaths.

The Square is heavily timbered and in the last 20 years the timber on its unallotted trust-status lands has begun to produce revenues of about \$1 million annually. These revenues, administered by the United States as trustee for the Indian beneficial owners, have been divided by the Secretary of the Interior exclusively among the persons on the official roll of

the Hoopa Valley Tribe, an organization created in 1950, whose membership rules limit enrollment to allottees of land on the Square, non-landholding "true" Hoopas voted upon by the Tribe, and long-time residents of the Square of a prescribed degree of Hoopa blood, descended from natives of the Square.

The plaintiffs are 3,323 Indians, in the main Yuroks of the Addition and their descendants, who are ineligible for membership in the Hoopa Valley Tribe and have thus been denied a share in the revenues from the Square. They bring this suit against the United States as their trustee for a money judgment for their alleged share in the timber income, claiming it as all-reservation property. The Hoopa Valley Tribe, in a sense the real party defendant, is present in the case as an *amicus curiae* aligned with the defendant; the position of the Government and the Tribe are identical and the two have filed joint briefs. (References to defendant or to the Government will therefore mean the Hoopa Valley Tribe as well.)

To simplify the litigation, the cases of 26 plaintiffs believed to be representative of the 3,323 were chosen for trial with the expectation that if the plaintiffs as a group were upheld on the common issue, resolution of the sample cases would develop standards by which the parties could dispose of many or most of the remaining cases. The first order of business is therefore the basic issue of whether the Indians of the Addition may be excluded from sharing in the revenues of the communal lands of the Square.

The history of the reservation may be succinctly stated: It was established in 1864 pursuant to the Act of April 8, 1864, 13 Stat. 39, its boundaries were in 1865 provisionally determined to be what has since been called the Square, formally so defined by an order of President Grant in 1873 and extended to include the Addition by order of President Harrison in 1891. The act of 1864 is the basis of the claims of all parties. No claim is made of any title or right antedating or overriding the statute or the authority exercised thereunder.

The plaintiffs contend that as Indians of the Addition, they are entitled to share in the resources of the entire reservation, including the Square. The enlargement of the reserva-

tion in 1891 formed, they maintain, a single, integrated reservation to which all the Indians on both the Square and the Addition got equal rights in common. The contrary position of the Government is that the Square survived the enlargement of the reservation in 1891 as an entity whose resident Indians had vested substantive rights, exclusive as against the Indians of the Addition. The executive order of 1891, the Government says, joined the Square and the Addition for administrative purposes only, not for purposes of substantive rights, and without effect on already vested rights of the Indians of the Square, now organized as the Hoopa Valley Tribe. The controversy is decided here in favor of plaintiffs, for the reasons which follow.

On August 21, 1864, Austin Wiley, the federal Superintendent of Indian Affairs for California, in a public notice "located" a reservation, to be called the "Hoopa Valley Reservation," "situated" on the Trinity River in Klamath County.<sup>1</sup> A second notice in February of the following year defined the boundaries of the "Hoopa Reservation" as a square tract bisected by the last 12 miles of the Trinity River before its junction with the Klamath and extending 6 miles on each side of the Trinity.<sup>2</sup> Eleven years later, on June 23, 1876,

<sup>1</sup> "By virtue of power vested in me by an act of Congress approved April 8, 1864, and acting under instructions from the Interior Department, dated at Washington City, D.C., April 28, 1864, concerning the location of four tracts of land for Indian reservations in the State of California, I do hereby proclaim and make known to all concerned that I have this day located an Indian reservation, to be known and called by the name and title of the Hoopa Valley Reservation, said reservation being situated on the Trinity River, in Klamath County, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President of the United States. Settlers in Hoopa Valley are hereby notified not to make any further improvements upon their places, as they will be appraised and purchased as soon as the Interior Department may direct."

"AUSTIN WILEY.

"Superintendent Indian Affairs for the State of California  
"PORT GASTON, CAL., August 21, 1864."

<sup>2</sup> "To Whom It May Concern:

"Be it known that by virtue of power vested in me by Act of Congress passed April 8th, 1864, and acting under instructions from the Department of the Interior, I have located and set aside for an Indian Reservation the following described tract of land to be known as the Hoopa Reservation: Beginning at a point where Trinity River flows into Hoopa Valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath River, as will be more particularly described by a map of said Reservation.

"Notice is hereby given to all persons not to settle or improve upon said Indian Reservation excepting as the Agent in charge may permit and in no manner to trespass thereon or interfere therewith.

President Grant in an executive order precisely defined the "exterior boundaries" of the "Hoopa Valley Indian Reservation" in accordance with a survey, and declared that the 89,572.43 acres embraced therein were "set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864."<sup>2</sup> The circumstances surrounding the establishment and enlargement of the reservation are described in the accompanying findings of fact.

Neither the public notices of 1864 and 1865 nor the executive order of 1876 mentioned any Indian tribe by name, nor intimated which tribes were occupying or were to occupy the reservation. In this they were consistent with the statute whose authority was being exercised, the Act of April 8, 1864, 13 Stat. 39. That act, cited by both public notices and by the executive order, authorized the President in his discretion to locate not more than four Indian reservations in California, at least one of them to be in the northern district of the state, of such extent as he deemed suitable for the accommodation of the Indians of the state, all without mention of any tribe by name.

Section 2 of the act read as follows (13 Stat. 40):

Sec. 2. That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land,

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"Free transit through the Reservation will be permitted all travelers, pack-trains and stock, subject to such restrictions as the local Agent may see proper to impose.

"AUSTIN WILEY,  
"Asst. Ind. Ag't, Cal."

"HOOPA RESERVATION, CAL.  
"February 18th 1865."

6

"EXECUTIVE MANSION,  
"June 23, 1876

"It is hereby ordered that the south and west boundaries and that portion of the north boundary west of Trinity River surveyed, in 1875, by C. T. Bissell, and the courses and distances of the east boundary, and that portion of the north boundary east of Trinity River reported but not surveyed by him, viz: Beginning at the southeast corner of the reservation at a post set in mound of rocks, marked 'H. V. R., No. 3'; thence south 17½ degrees west, 205.13 chains, to southeast corner of reservation; thence south 72½ degrees west, 480 chains, to the mouth of Trinity River, be, and hereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and the land embraced therein, an area of 89,572.43 acres, be, and hereby is, withdrawn from public use, and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864. (13 Stats., p. 39.)"

"U. S. GRANT"

within the limits of said state, to be retained by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended: *Provided*, That at least one of said tracts shall be located in what has heretofore been known as the northern district: \* \* \* *And provided, further*, That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included, the same may be enlarged to such an extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended.

The powers conferred by this statute are to be construed in keeping with the broad connotations of the words employed: "at his discretion," "suitable extent," "accommodation of the Indians," "practicable" and "due regard." *South Puerto Rico Company Trading Corp. v. United States*, 167 Ct. Cl. 236, 260-61; 334 F. 2d 622, 631-32 (1964), *cert. denied*, 370 U.S. 964 (1965). It is not disputed that the President had complete discretion as to which tribes were to be located on any of the reservations. The number of the tribes to occupy a reservation was also a matter for Presidential decision. There were many Indian tribes in California; in the north, in the area of the Hoopas and the Yuroks, almost every river and creek had its own tribe. Since there were to be no more than four reservations in the state—less, if the President so decided—it was inevitable that each reservation could and almost certainly would be occupied by more than one tribe. How many tribes was left to the President; the President would in his discretion adjust the size of a reservation to the number of tribes and Indians to be accommodated.

Given such a statutory scheme, faithfully reflected by the omission of reference to any Indian tribe in the notices of 1864-65 and the executive order of 1876, the Hoopa Indians could get no vested or preferential rights to the Square from the fact alone of being the first or among the first to occupy

the Square with Presidential authority. The sequence in which tribes were authorized to occupy a reservation gave no rights. Any exercise of the President's discretion in favor of the Hoopas, in approving their residence on the reservation, gave the Hoopas no vested rights as against such other tribe as might be the beneficiary of a simultaneous or subsequent exercise of the President's discretion. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 103 (1948); *Healing v. Jones*, 210 F. Supp. 125, 138, 153, 170 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963); *Crow Nation v. United States*, 81 Ct. Cl. 238, 278 (1935).

It is claimed by defendant, however, that the Hoopas were the sole aboriginal occupants of the Square. The legal consequences were this claim upheld, as against the statute and the President's authority, need not be gone into, for the claim of fact is unfounded. The accompanying findings recount that the Hoopas shared the Square with at least some Yuroks, whose native villages ranged along the Klamath River from the ocean to the Trinity—the area later to become the Addition—to the banks of the Trinity near the Klamath. This conclusion of fact as to the presence of Yuroks on the Square prior to white settlement does not, of course, support the claim of the present plaintiff Yuroks of the Addition, who were not introduced into the reservation until 1891, but it does negate the claim of the defendant insofar as it is based upon original exclusive Hoopa occupancy of the Square.

Another contention is that vested rights in the Square were conferred upon the Hoopas under a treaty made by Wiley at the time he established the reservation in 1864. This treaty, which made peace with the Hoopas and several other tribes then at war with the United States, obligated the United States "to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa Valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes." It is conceded that this promise was not a treaty in the constitu-

tional sense. Its making was not authorized, and it was not ratified. Its text is found as an attachment to a report by Wiley printed in the annual report for 1864 of the Superintendent of Indian Affairs; it is there captioned "Treaty of peace and friendship between the United States government and the Hoopas, South Fork, Redwood, and Grouse Creek Indians."

Putting aside any question of the binding quality of this document, it is not properly to be read as having sought to restrict the President's discretion under the act of 1864 or to give rights in the reservation to some tribes and withhold them from others. Within the week of the making of the treaty, Wiley in his first public notice locating the "Hoopa Valley Reservation" described the reservation only as an "Indian reservation" without any reference to who should occupy it. In the setting in which the treaty was presented to the Indians who agreed to it, described in the accompanying findings, the treaty is properly to be construed as a promise to devote Hoopa Valley to an Indian reservation for those tribes that would cease their hostilities and live at peace with the United States. So understood, the Klamaths or Yuroks were among its beneficiaries, for they laid down their arms and thenceforth remained at peace with the United States. There is good ground for concluding that though the caption of the treaty did not mention the Klamaths (Yuroks) as original parties, they were entitled to its benefits as among the tribes to whom the treaty was in fact presented and who were thereby persuaded to lay down their arms.

It is perfectly plain that from the outset in 1864 all involved understood that the reservation was intended for an undetermined number of tribes including the Hoopas and the Klamaths, and that the authorities repeatedly acted on this assumption. Some Yuroks already lived in the Square in 1864 and others were soon settled there, according to the best data on the peoples of the reservation. Within a fortnight of his first notice locating the reservation, Wiley reported the precise names of the tribes occupying every reservation in California except the Hoopa Valley Reserva-

tion; the Hoopa Valley Reservation, he said, contained "Various tribes." Soon thereafter Hoopas, Klamaths, and Redwoods appear as residents of the reservation. Saiaz, Wiyot, Wylackie and Sinkyone Indians were moved to the reservation from elsewhere (and apparently did not remain, at least identifiably). In 1869 Wiley's successor had a plan (not executed, for reasons which do not appear) to move 1800 Klamath Indians to the reservation. The Klamath River Reservation (occupied by Yuroks and constituting the ocean end of what later became the addition to the Hoopa Valley Reservation) had been destroyed by flood in 1861, and efforts to resettle its Indians, Yuroks, had not been successful. The 1800 Klamaths were thus probably the forebears of the present plaintiffs.

The annual report of the Commissioner of Indian Affairs for 1872 stated that the Indians in the care of the agency at Hoopa Valley were the Humboldts (Wiyots and others), Hoonsoltoms, Miscolts, Saiaz and several other bands, numbering 725. The reservation on the Trinity, the Commissioner said, "was set apart per act of April 8, 1864, for these and such other Indians in the northern part of the State as might be induced to settle there." And in the years between the executive orders of 1876 and 1891 the Commissioner's annual reports contained a table giving the names of the tribes "occupying or belonging" to the various reservations. For the Hoopa Valley Reservation, the tribal names given were Hunsatang, Hoopa, Klamath River, Redwood, Saiaz, Sermalton, Miskut and Tiahtanatan. During all these years, therefore, it was well understood that the reservation contained several tribes and was intended for whatever tribes might be settled there by authority of the President.

When, therefore, President Harrison by executive order of October 16, 1891 extended the boundaries of the reservation to include the contiguous strip of land along the Klamath River, there were no vested rights to the Square incapable of divestment, or at least dilution, by a Presidential introduction of additional tribes into the reservation. There could be no such rights in view of the President's authority under the act of 1864 and the manner of its exercise to that time.

The terms of the executive order (text in the note<sup>4</sup>) described the reservation as created under the act of 1864, and "extended" its "limits" "so as to include" the tract since called the Addition. No qualification was imposed on the incorporation of the Addition into the reservation, except that tracts on the Addition privately owned under the land laws were "excluded from the reservation as hereby extended."

Such words in an executive order, in this respect no different than the statute by whose authority it was made, are "to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears (*Miller v. Robertson*, 266 U.S. 243, 250 (1924))." No reason to the contrary appearing, the order is to be given its natural effect of granting to the Indians of the Addition, as Indians of the enlarged reservation, rights in the reservation equally with the Indians of the Square.

The order has been held to be a lawful exercise of the President's "continuing authority," under the act of 1864, within his "large discretion" concerning the exercise of that authority, to "alter and enlarge" the reservation "from time to time in the light of experience." *Donnelly v. United States*, 298 U.S. 243, 256-57 (1913). The President had no less power to enlarge a reservation created under the act of 1864 than he had to locate it originally. Five prior Presidents—Presidents Grant, Hayes, Garfield, Arthur and Cleveland—the Supreme Court noted, had made similar orders, with respect to the reservations authorized by the act, "altering and enlarging the bounds of the reservations, restoring portions of their territory to the public domain, and abolishing reservations once made and establishing others in their stead; and in

"EXECUTIVE MANSION, October 18, 1891"

"It is hereby ordered that the limits of the Hoopa Valley Reservation in the state of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April 8, 1864, (13 Stats., 28), be and the same are hereby extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended."

"Benj. Harrison"

numerous instances Congress in effect ratified such action."  
*Donnelly v. United States, supra* at 258.

As already noted, the plain and natural consequence of the order was the creation of an enlarged, single reservation incorporating without distinction its added and original tracts upon which the Indians populating the newly-added lands should reside on an equal footing with the Indians theretofore resident upon it. This the President was as free to do under the reserved powers granted him by the act of 1864 as he had been free in the early years, without enlarging the reservation, to settle Redwoods, Saiaz and others and as he would have been free in 1889 to settle upon the reservation the Yuroks of the Klamath River Reservation. In introducing the Yuroks of the Addition into the enlarged reservation in 1891, on a basis of equality with their kinamen and the several other tribes already there, the President was merely continuing to accommodate the tribes of the area in the Indian reservation in Northern California he had established under the act of 1864. Compare *Halbert v. United States*, 283 U.S. 753 (1931) and *Quinault Tribe v. United States*, 102 Ct. Cl. 822 (1945), on the President's power to enlarge a treaty reservation for the common benefit of the tribe originally settled there and tribes "in that locality."

Although the purpose of the executive branch in enlarging the reservation would seem to be apparent from the facts, the defendant reaches a different result entirely; it contends that the purpose of the executive order was to join the parts of the enlarged reservation only technically, for administrative purposes only, the Indians of each tract to retain their rights in their respective tracts. No hint of such a purpose appears on the face of the executive order. And no support for such purpose appears in the data said by defendant to prove it—the background and origins of the executive order and of legislation affecting the Klamath River Reservation, a part of the Addition. An exhaustive inquiry into the data, set out in detail in the accompanying findings, fails to reveal even a mention of such a purpose as defendant asserts, much less the compelling showing which would be required to curtail the ordinary consequences of the executive order.

The executive order originated in the Administration's

desire to give reservation status to the Connecting Strip and the Klamath River Reservation, the latter then recently held by the courts to be an abandoned Indian reservation and threatened by Congress with a bill for its public sale. The object was to provide the legal basis for expulsion of white traders from the area and for the allotment of land in severalty to the Indians of the area, under the General Indian Allotment Act of February 8, 1887 as amended (24 Stat. 388, 26 Stat. 794). Any qualification on the incorporation of the Addition into the reservation would have jeopardized the desired status, for only four reservations were permitted in California under the act of 1884 and four were already in existence. Full reservation status could come only from a bona fide merger of the Addition into the reservation, not a "technical" joinder, "for administration only," of a reservation with a dubious status to one of lawful status. In the enlarged reservation resulting from such a merger, there could be only equal rights for all Indians of the reservation.

Administrative opinions, in the years following the executive order of 1891, recognized both that a number of tribes including Klamaths, Hoopas and other tribes were entitled to rights on the reservation and, with pointed relevance to the instant case, that the Indians of the Addition and the Square were equal in respect to rights in the lands of the Square. These opinions are described in the accompanying findings. In one of them, in 1916, it was ruled that the Hoopas, Klamaths and several other tribes were entitled to rights on the reservation. In another, in 1933, it was determined that allotments of land on the Square should cease, and assignments of land contingent on cultivation be substituted, because, it was held, the Indians of the Addition and the Square were equally entitled to allotment of lands and there was insufficient land for all those entitled.

Defendant attacks these rulings as erroneous, as made by men of lesser rank and as covering only a short span of years. The rulings were sound, they were made by, among others, a Commissioner, a Chief Clerk of the Indian Office in 1916 (then the officer third in rank, next after the Assistant Commissioner), and they were made whenever there was need for them. No contrary ruling worth the mention was made in the Department of the Interior until the Secretary in 1955

began to pay the income from the Square to the Hoopa Valley Tribe and the Deputy Solicitor in 1958 wrote an opinion justifying the legality of his action. 65 Dec. Int. Dept. 59 (1958). That opinion is not supported by the defendant; the opinion does not reflect the facts found here, primarily the nonexclusive nature of the Hoopas' residence in the Square, and it proffers neither tangible support nor rational theoretical basis for its assertion that the executive order of 1891 was intended only for administrative convenience.

The baseless belief that the Indians of the Square had exclusive rights in the lands of the Square seems to have grown from the remoteness of the Addition from the Square, the roughness of the terrain of the former, and the different stock of their respective inhabitants. The error flowered during the inordinate delay—from 1894 to 1922—between the time of allotment of Addition lands and allotment of land on the Square. The Indians of the Square, deprived for so long of allotments, became understandably jealous and possessive for the entire Square.

The 1891 executive order, however, withstands all attacks. It was fully authorized by the act of 1864. No vested Indian rights in the Square existed, and the effect of the order was to enlarge both the area and the population of the reservation, without any limitation on the rights of all the Indians in the communal lands of the enlarged reservation.

Turning to the cases of the 26 individual plaintiffs, stated in detail to the findings, it appears that 22 of them, named in the accompanying ultimate findings and conclusions, are sufficiently proven to be Indians of the reservation to warrant a determination now that they are entitled to recover, in amounts to be calculated after all the 3,323 claims are tried and determined. In the cases of the remaining four, there are questions—of possible loss of reservation rights or of degree of Indian blood—as require that their cases be retried or rebriefed, as seems indicated in each case. With the common issue of exclusive right out of the way, the parties through their counsel will presumably be able to address themselves to the individual claims, and agree upon standards for the recognition of individual claims. There should be no reason to insist upon a formal appearance by each claimant in court. Sworn testimony may be given by affidavit or in the

equivalent of a deposition, followed by stipulation for judgment where no contest is planned.

**FINDINGS OF FACT\***

*1855-64—The Klamath River Reservation*

1. On November 16, 1855 the President directed that there be set aside in Northern California, as the Klamath River Reservation, "a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River" for a distance of approximately 20 miles, not to exceed 25,000 acres.

The President acted pursuant to the Act of March 3, 1853 (10 Stat. 226, 238), as amended March 3, 1855 (10 Stat. 686, 699), which authorized the creation of seven military reservations in California or in the Territories of Utah and New Mexico.

2. In Northern California the Klamath River first flows southwest to its junction with the Trinity River (which flows north and is essentially a branch of the Klamath) and then, veering sharply to the northwest, continues to the ocean. The two rivers thus form a Y whose arms are the Klamath and whose trunk is the Trinity. The Klamath River Reservation, on the upper half of the Y's left arm, extended upstream, from the ocean, for half the distance of the left arm to about 25 miles from the junction of the two rivers.

3. At the time of its creation in 1855, the Klamath River Reservation was occupied by about 2,000 Indians of the Yurok tribe, also known as Klamaths.

"Klamath," the name also of a more northerly group of Indians in Oregon, is as used herein and in the documents considered herein the name of the Indians resident, generally speaking, in the basin of the Klamath River in Northern California.

4. The tribe of Klamaths living down river on the Klamath were the Yuroks. Yurok means down river. Those living up river (roughly speaking beyond the Trinity's junction with

\*Findings are grouped and titled for convenience; neither placement nor title affects the findings, and a title does not necessarily describe all the findings which follow.

the Klamath) were the Karoks. Karok means up river. Sometimes Yuroks are called Lower Klamath Indians, the adjective "lower" meaning they live below the junction of the two rivers.

The Indian tribes of Northern California were not organized or large entities; Indians resident on a particular river or fork were a "tribe." Tribal names were often applied inexactly and usually meant only a place of residence. To call an Indian a "Hoopa" or a Trinity Indian meant he was an Indian resident in the valley of the Trinity called Hoopa. The names "Yurok" and "Karok," as seen above, also meant a place of residence.

"Hoopa" is used herein instead of its other forms, "Hupa" and "Hoopah." References to Hoopas and the Hoopa tribe should be distinguished from the membership of the Hoopa Valley Tribe, the *amicus curiae*, an organization created in 1950 with intricate membership rules.

5. The native villages of the Lower Klamaths or Yuroks were located on the Pacific coast from Wilson Creek, north of the mouth of the Klamath, to Little River, south of the Klamath, along the Klamath River from its mouth to Bluff Creek, located a short distance upstream from the Klamath-Trinity junction, and (of particular significance in this case) in the canyon of the Trinity River in the most northerly part of the river near the junction of the Trinity with the Klamath and in a village a small distance from the Trinity.

6. The native villages of the Upper Klamath Indians of Karoks were along the upper Klamath, from a point just above Bluff Creek, upstream to Indian Creek. Weitchpec, a village at the junction of the two rivers, is often treated as the dividing point, and is allotted to the Yuroks.

7. Following the creation of the Klamath River Reservation, Indians of other tribes were moved to the reservation, among them 500 Tolowa Indians brought in 1856 from their native territory on the Smith River near the Oregon border. By 1858, a large majority of these Tolowas returned to their former territory.

8. In 1861, the Klamath River Reservation was flooded, and nearly all the arable land was destroyed. The Superintendent and a number of the Indians of the reservation moved to the Smith River Indian Reserve on the Smith River

near the Oregon boundary. Since the Klamaths lived principally on the salmon in the river, a substantial or greater number of them refused to leave and remained in the area and in the area further up river. Many of those who moved to the Smith River Reservation soon or eventually returned to their former territory on the Klamath.

9. Because the following findings turn away from the Klamath River Reservation to the establishment of the Hoopa Valley Reservation and do not return to the Klamath River Reservation until 1891, a brief foresight is given: Those Indians who remained on the Klamath River Reservation eventually came under the supervision of the Indian Agency for the area, located at the Hoopa Valley Reservation on the Trinity River southward from its junction with the Klamath, after that reservation was provisionally located in 1864. Thereafter, in 1891, the Hoopa Valley Reservation was enlarged, by executive order, to include not only the Klamath River Reservation but the connecting strip of land along the Klamath River between the two reservations.

*The Act of April 8, 1864*

10. The Act of April 8, 1864 (13 Stat. 39), the source of all claims herein and of central importance in this case, authorized the President in his discretion to set aside "not exceeding four tracts of land" within the State of California, at least one of them to be in the northern district, "for the purposes of Indian reservations," to be located "as remote from white settlements as may be found practicable." The reservations were to be "of suitable extent for the accommodation of the Indians of said state" and they were to include, in the President's discretion, any existing Indian reservations, "enlarged to such an extent as in the opinion of the President may be necessary." The remaining several reservations in California were to be surveyed into lots and offered for public sale.

The text of the relevant portion of the Act is as follows (13 Stat. 40):

Sec. 2. *And be it further enacted*, That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes

of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended: *Provided*, That at least one of said tracts shall be located in what has heretofore been known as the northern district: *And provided, further*, That if it shall be found impracticable to establish the reservations herein contemplated without embracing improvements made within their limits by white persons lawfully there, the Secretary of the Interior is hereby authorized and empowered to contract for the purchase of such improvements, at a price not exceeding a fair valuation thereof, to be made under his direction. But no such contract shall be valid, nor any money paid thereon, until, upon a report of said contract and of said valuation to Congress, the same shall be approved and the money appropriated by law for that purpose: *And provided, further*, That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included, the same may be enlarged to such an extent, as in the opinion of the President may be necessary, in order to its [sic] complete adaptation to the purposes for which it is intended.

Sec. 3. *And be it further enacted*, That the several Indian reservations in California which shall not be retained for the purposes of Indian reservations under the provisions of the preceding section of this act, shall, by the commissioner of the general land-office, under the direction of the Secretary of the Interior, be surveyed into lots or parcels of suitable size, and as far as practicable in conformity to the surveys of the public lands, which said lots shall, under his direction, be appraised by disinterested persons at their cash value, and shall thereupon, after due advertisement, as now provided by law in case of other public lands, be offered for sale at public outcry, and thence afterward shall be held subject to sale at private entry, according to such regulations as the Secretary of the Interior may prescribe: \* \* \*

11. Shortly after the passage of the act, Austin Wiley, already in the service of the Indian Bureau in California, was appointed Superintendent of Indian Affairs for California and directed to give his immediate attention to the matter of the location of the four reservations authorized by the

act, so that the Department of the Interior could have the benefit of his judgment in making the locations.

*First Location of a Reservation in Hoopa Valley*

12. At that time a number of Indian tribes of Northern California had for some years been at war with the forces of the United States. Many Indians had been taken prisoner. Other warriors, headquartered in Hoopa Valley, were willing to surrender. On his appointment Wiley proceeded to Hoopa Valley, treated with the tribes there represented, and there located a reservation by the public notice set out in the following finding.

13. On August 21, 1864, Superintendent Wiley gave public notice that he had located an Indian reservation, to be known as the Hoopa Valley Reservation, on the Trinity River in Klamath County, California, the boundaries to be thereafter prescribed.

The notice in its entirety read as follows:

By virtue of power vested in me by an act of Congress approved April 8, 1864, and acting under instructions from the Interior Department, dated at Washington city, D.C., April 26, 1864, concerning the location of four tracts of land for Indian reservations in the State of California, I do hereby proclaim and make known to all concerned that I have this day located an Indian reservation, to be known and called by the name and title of the Hoopa Valley Reservation, said reservation being situated on the Trinity river, in Klamath county, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President of the United States.

Settlers in Hoopa valley are hereby notified not to make any further improvements upon their places, as they will be appraised and purchased as soon as the Interior Department may direct.

AUSTIN WILEY,  
*Sup't Indian Affairs for the State of California.*  
FORT GASTON, CAL., August 21, 1864.

14. The Klamath County of that day, in which the new reservation was located, has since been largely added to present-day Humboldt County. Irregularly shaped, it in-

cluded the area north and south of the Klamath above its junction with the Trinity and stretching eastward to the Salmon River, the area north and south of the Klamath below its junction with the Trinity to about the beginning of the Klamath River Reservation, and the territory contained within a line drawn along the Klamath for the extent of the Klamath River Reservation, then going southward along the coast to about the mouth of the Mad River, then going due eastward to about the southerly point of the Hoopa Valley Reservation and then, irregularly, going further east. See the map entitled *Colton's California*, published by J. H. Colton, 1864, available at the Library of Congress.

In terms of the Y mentioned above, Klamath County included the territory west of the left arm and trunk, to the ocean, the territory east of the right arm and trunk, to beyond the Salmon River, substantial territory north of the Y's right arm, and north of its left arm to the inland end of the Klamath River Reservation. The county thus included a great part of the native territory of the Klamath Indians (see findings 5, 6, *supra*).

*The "Treaty" Made in Hoopa Valley in 1864*

15. A "treaty" made by Wiley with the Indian tribes at the time he located the reservation appears as an attachment to a report Wiley wrote on August 29, 1864, some days after his public notice. The report and the attached documents are set out as they appear in the annual report of the Commissioner of Indian Affairs for 1864:

OFFICE OF INDIAN AFFAIRS,  
San Francisco, California, August 29, 1864.

Sir: On the 2d ultimo I informed you that I would start for the north for the purpose of making some kind of a settlement with the hostile Indians in the Humboldt military district. The headquarters for the Indians who have been engaged in the war in that portion of the State for five years past is Hoopa valley, on the Trinity river. I arrived there on the 10th ultimo, and found most of the hostile Indians in the valley, with their guns still in their hands, waiting my arrival.

They had been induced to come in by the officers commanding the district, under promise of protection until

terms could be arranged; but so cunning were they, and so suspicious of white men, that they kept most of their guns hid, and were constantly on the alert, ready to break to the mountains in case any effort should be made to remove them to a reservation. They protest that they prefer death or starvation in the mountains to removal.

I found among the leaders, and those having the most influence, young men, those that I had known as boys, most of whom have had more or less experience among white men as packers, herdsman, farmers, &c. They all speak English and are intelligent. They make dangerous enemies, but I have every reason to believe they will comply with every obligation they have subscribed to if I keep my faith with them. The old Indians used their influence against giving up guns, and protested that I would lie to them, as other agents had done; but the influence is now all in the hands of the younger or "second crop" Indians. They are the ones to be conciliated; peace with them secures peace with all. Enclosed you will find copy of a treaty I proposed, and which they finally accepted. From the 16th to the 21st they were busy in delivering up their guns and pistols, many of them being hid out miles from the valley. On the 22d I issued the notice marked B, called a meeting of the settlers, and made known to them what terms I had offered the Indians to secure peace. They were all well satisfied, with, perhaps, the exception of two or three whose associations have been exclusively among the Indians. Several of the settlers will leave their places this fall, trusting to the government to pay them for their improvements.

The title to the whole of the lands in the valley is vested in the government, and as the improvements only are to be purchased, a very large sum will not be required. A good flouring mill and a fine saw-mill are there. The valley is beautifully located, surrounded by high mountains, well watered, with land enough in cultivation to feed all the Indians that are there or that may come there. Trinity river affords them fish during the spring and fall season, and the mountains on either side abound with acorns, berries, seed, &c.

At present there are about six hundred Indians in the valley. I appointed L. C. Beckwith a temporary special agent there at the request of the Indians themselves. I authorized him to assist them in building new houses, (their old ones having been burned during the war,) and to incur such expense as was absolutely necessary in preparing shelter for them before winter set in.

Enclosed please find a rough sketch of the valley; which, without being accurate in detail, will give you

some idea of its situation and the location of the improvements.

I propose to take the whole of the valley and to the summit of the mountains on each side, which is about five miles. There are no improvements upon the proposed reservation excepting those within the valley.

I trust my action will be approved, and that no time will be lost by the department in having the improvements appraised. We shall want to commence ploughing there in November for our next year's crop, and the sooner the citizens and Indians know that the valley is to be the property of the latter, the better it will be for all concerned.

Soliciting your earliest attention to this matter, I remain, very respectfully, your obedient servant,

AUSTIN WILEY,  
*Superintendent of Indian Affairs, California.*

Hon. WILLIAM P. DOLE,  
*Commissioner.*

*Treaty of peace and friendship between the United States government and the Hoopa, South Fork, Redwood, and Grouse Creek Indians.*

#### ARTICLE I.

Sec. 1. The United States government, through Austin Wiley, superintendent of Indian affairs for the State for California, by these presents doth agree and obligate itself to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes.

Sec. 2. Said reservation shall include a sufficient area of the mountains on each side of the Trinity river as shall be necessary for hunting grounds, gathering berries, seeds, &c.

Sec. 3. The United States government shall provide suitable clothing and blankets for the men, women, and children, which shall be distributed each year by the agent in charge.

Sec. 4. Suitable instructions shall be given the squaws to enable them to make their own clothing, take proper

care of their children, and become generally efficient in household duties.

Sec. 5. An agent and a sufficient number of employees to instruct the Indians in farming and harvesting shall be appointed, to reside upon the reservation, and no other white men shall be permitted to reside upon said reservation, except such as are in the military service of the United States or employed in government service.

Sec. 6. A physician shall be appointed to reside upon the reservation, whose duty it shall be to minister to the wants of the sick and look to their health and comfort.

## ARTICLE II.

Sec. 1. All Indians included among those subscribing to this treaty must obey all orders emanating from the agent in charge.

Sec. 2. No Indians belonging to either of the tribes herein enumerated shall go beyond the limits of said reservation without a written pass from the agent in charge. All so offending shall not be deemed friendly, and shall be hostile Indians.

Sec. 3. All Indians who have taken part in the war waged against the whites in this district for the past five years shall be forgiven and entitled to the same protection as those who have not been so engaged.

Sec. 4. All guns and pistols shall be delivered to the commanding officer at Fort Gaston, to be held in trust by him for the use and benefit of the Indians, to be used by them in hunting only, in such numbers and for such length of time as the agent may direct. All ammunition in their charge to be turned over to the agents and paid for at its actual value in Indian money.

### INDIAN RESERVATION NOTICE.

[There followed the text of the notice of the location of the Hoopa Valley Reservation, which appears in finding 13, *supra*.]

16. Commissioner W. P. Dole responded to Wiley's letter (foregoing finding) on October 3, 1864 as follows:

DEPARTMENT OF THE INTERIOR,  
Office Indian Affairs, October 3, 1864.

SIR: Your communication, dated August 29, 1864, enclosing a draught of the agreement made by you with the lately hostile Indians of the Trinity river, with the

sketch of the situation of and settlements in the Hoopa valley, and the notice issued by you to the settlers, under date of—, is received and duly considered.

From your description of the valley thus selected for a reservation, its fertility, and consequent capability to sustain the people proposed to be placed upon it, its isolation from the white settlements, and the willingness expressed by the Indians to acquiesce in the arrangements, and confine themselves to the locality selected, I am induced to approve of your action, and trust that great good will result to the Indians, as well as to the whites, by this close of an expensive course of hostilities, and the consequent concentration of the Indians at a point where they can be controlled, and where measures may be adopted to improve their condition. I return herewith a copy of the agreement, as forwarded by you, with certain additions, suggested by the Secretary of the Interior, the document in this amended form meeting with his approval.

The relations of the government of the United States to the Indians of California do not contemplate treaties with those Indians, to be submitted by the President to the Senate for confirmation; but as it is deemed advisable to have the chiefs and leading men of the tribes in question subscribe their hands to a document which shall fully commit them hereafter, you will, after explaining to them the nature of the additions or alterations now suggested, as being intended solely for their benefit, cause a copy to be signed by them, and forward it to this office.

\* \* \* \* \*

The establishment of the Hoopa Valley reservation, if approved, of course contemplates the abandonment of that at Mendocino, as but four are authorized, and it is understood from your communication of later date than the one to which this is a special reply, that the Indians upon the latter reservation are to be removed this fall to Round valley.

You will please take special care in the description of the boundaries of the proposed reservation at Hoopa valley, so that its proper limits may be of record in this office and the General Land Office, when approved by the President of the United States.

Very respectfully, your obedient servant,  
W. P. DOLE, *Commissioner.*

AUSTIN WILEY, Esq.,  
*Sup't Indian Affairs, San Francisco, California.*

17. It is conceded that Wiley's "treaty" (finding 15, *supra*) was not ratified. (Even agreement is doubtful. No signatures

by Indians appear (foregoing finding), and it has not been shown that the Commissioner's desired amendments (foregoing finding) were ever made known to any Indians or approved by them. In a public notice, however, Wiley said that the treaty stipulations were "confirmed" on February 8, 1865.)

18. From Wiley's letters, reported in the Commissioner's report for 1864 (which is the "Indian Report, 1864" and the source of all the page references mentioned below), it appears that

(a) The Klamath Indians were among the Indians at war with the forces of the United States. ("[T]he Klamath and Hoopa or Trinity Indians were at war with the forces of the United States at the time of the passage of the act of 1864, and had been so for some years. Indian Report, 1864, pp. 123, 127, 130, 133, 134-138." *Donnelly v. United States*, 228 U.S. 243, 257 (1913).)

In one of Wiley's letters, he referred to the "Klamath, Redwood and Trinity Indians, with whom we are now at war." P. 125; see also pp. 120-21. In other letters he wrote of the war with the Indians of Humboldt, Klamath and Trinity counties (pp. 116, 130). The Indians of Klamath County were surely the Klamath Indians (see findings 3, 5, 6, 14, *supra*), and it therefore appears that Wiley doubly referred to the Klamath Indians, both as "Klamath" Indians and as the Indians of Klamath County.

(b) The warring Indians who had not been taken prisoner had made their headquarters in Hoopa Valley; they were ready to surrender. Pp. 130, 131, 133, 134.

(c) Wiley went to Hoopa Valley, treated with the various tribes be found there, persuaded them to accept his "treaty," established a reservation and thereby brought to an end the war with the Indians of Humboldt, Klamath and Trinity counties (pp. 116-117, 119), who, as noted above, included the Klamaths.

(d) From the foregoing it follows and is found that despite the caption of the "treaty," describing it as made with the "Hoopa, South Fork, Redwood, and Grouse Creek Indians" (finding 15, *supra*), the tribes with whom it was made included the Klamaths.

(e) A reservation to be shared by Hoopas and Klamaths was not an unfamiliar idea. A treaty concluded in 1851 with bands of Indians of those tribes (but not ratified) would have created such a reservation of a tract which in substantial part coincided with what eventually became the Hoopa Valley Reservation.

19. After 1864 the Klamaths lived in peace in and in the area of the Klamath River Reservation, in their villages on the Trinity near the Klamath, on the connecting strip of land between the two reservations, and elsewhere. It follows, therefore, that even if the Klamaths were not originally among the tribes with whom Wiley made his treaty, they availed themselves of its benefits within the intendment of its Article I, Section 1 (finding 15, *supra*), and thereby became entitled to its benefits.

20. With his letter annual report of September 1, 1864 Wiley enclosed a tabular "Report of Indians on the reservation within the California superintendency, September 1, 1864," containing the name of the reservation, names of tribes, and numbers of Indians, male, female and total. For each of the four reservations other than Hoopa Valley he listed the names of tribes occupying the reservation. For Hoopa Valley, he reported "Various tribes, about 600," giving no tribal names and no numbers for male and female.

*1865—The 12-Mile Square as the Boundary of the Hoopa Valley Reservation*

21. Wiley's first notice had given no hint of the size of the reservation he had "located"; the notice had said that the reservation, which he called the "Hoopa Valley Reservation," was "situated on the Trinity River, in Klamath county, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President" (finding 13, *supra*).

Wiley's second public notice, on February 18, 1865, read as follows:

*To Whom It May Concern:*

Be it known that by virtue of power vested in me by Act of Congress passed April 8th, 1864, and acting under instructions from the Department of the Interior, I have

located and set aside for an Indian Reservation the following described tract of land to be known as the Hoopa Reservation: Beginning at a point where Trinity river flows into Hoopa valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath river, as will be more particularly described by a map of said Reservation.

Notice is hereby given to all persons not to settle or improve upon said Indian Reservation excepting as the Agent in charge may permit, and in no manner to trespass thereon or interfere therewith.

Free transit through the Reservation will be permitted all travelers, packtrains and stock, subject to such restrictions as the local Agent may see proper to impose.

AUSTIN WILEY,  
*Sup't Ind. Aff's, Cal.*

HOOPA RESERVATION, CAL.,  
*February 18th, 1865.*

(No such map as is mentioned in this notice has been referred to by the parties.)

In the first notice (finding 13, *supra*) Wiley had called the reservation the "Hoopa Valley reservation." According to a letter he wrote (on August 2, 1864) about the time of the first notice (August 21, 1864) he was then thinking of an area about 5x2 miles. The valley is about 6 miles long and the canyon north of it is another 6 miles long. The treaty contemplated a reservation of the "whole of Hoopa valley." When, therefore, the public notice in 1865 described a reservation whose north-south dimension was the river from the beginning of the valley on the south to the junction with the Trinity on the north, the reservation was being doubled in size, in that dimension alone. And, significantly, the added area in the north--the canyon of the Trinity near the junction with the Klamath--was native territory of the Yurok.

The Trinity River in the Hoopa Valley, described by Wiley in the foregoing notice as bisecting the reservation he located, flows north through the valley to the junction of the Trinity and the Klamath. The valley of the reservation was for a time thought of as 16 miles long, but was finally regarded as 12 miles in extent. Since the reservation was described as extending 6 miles on each side of the river, to the junction of the two rivers, the reservation formed a 12-mile

square bisected by the last 12 miles of the Trinity River, and was to be called the "Square" or the "12-mile Square."

The Square was centered on the trunk of the Y formed by the two rivers (finding 2, *supra*). Compared to the Square, the Klamath River Reservation was in terms of the Y a thickening of the upper half of the Y's left arm (finding 2, *supra*). Actually, the boundaries of the Klamath River Reservation zigzagged, following the river's turnings. Between the two reservations was non-reservation land and a stretch of the Klamath River about 25 miles long.

*1864-1875—The Peoples of the Hoopa Valley Reservation*

22. As of February 18, 1865, when Superintendent Wiley defined the boundaries of the Hoopa Valley Reservation (foregoing finding), there have been identified, among the "various tribes" resident there (finding 20, *supra*), a substantial number of the Hoopa tribe living in several villages in the Hoopa Valley proper, a smaller group of Lower Klamath or Yurok Indians living in a few villages in the northern and northwestern part of the tract and a number of Indians of the Redwood or Chilula tribe. (See findings 5, 20, *supra*.)

23. The native villages of the Hoopas were along the Trinity River in the Hoopa Valley, within the Square, and continuing upstream (south) to, at least, the Trinity's south fork, beyond and south of the Square.

24. The native villages of the Redwoods or Chilulas were elsewhere than on the Klamath or Trinity Rivers.

25. In 1865, Charles Maltby, the Superintendent of Indian Affairs, California, reported that it was expected that some 1,800 Klamath River Indians would move to the Hoopa Valley Reservation. The move did not take place.

26. Superintendent Maltby's report for 1865 states that the Hoopa Valley Reservation could support only the Indians living there at that time and "those that will probably come in from the vicinity."

27. A report of B. C. Whiting, Superintendent of Indian Affairs, California, to the Commissioner in 1868 stated that he was preparing a large number of Indian houses at Hoopa Valley for the Smith River Indians and such others as he could collect together.

28. (a) In 1869 more than 300 Indians were moved by the Superintendent to Hoopa Valley in the Hoopa Valley Reservation from the Smith River Reservation, terminated by statute. These Indians were of the Saiaz or Nongatl, the Wiyot, Wylackie and Sinkyone tribes. The native villages of these tribes were elsewhere than on the Klamath or Trinity Rivers.

(b) The report for 1872 by the Commissioner of Indian Affairs is revealing for its identification of the reservation with Indians generally in Northern California and its recognition of the varied tribes then on the reservation.

The report said:

*Hoopa Valley agency.*—The Indians belonging to this agency are the Humboldts, Hoonsoltons, Miscolts, Siahs, and several other bands, numbering 725.

A reservation was set apart per act of April 8, 1864, for these and such other Indians in the northern part of the State as might be induced to settle thereon. This reservation is situated in the northwestern part of the State, on both sides of the Trinity River, and contains 38,400 acres. \* \* \*

*Formal Location of the Reservation by Executive Order in 1876*

29. Wiley's location of the reservation in 1865 was soon implemented by legislation for payment for the improvements made by settlers, but his action did not get Presidential confirmation for 11 years, until 1876.

By Executive Order of June 23, 1876, President Grant formally defined the boundaries of the Hoopa Valley Reservation as follows:

It is hereby ordered that the south and west boundaries and that portion of the north boundary west of Trinity River surveyed in 1875 by C. T. Bissell, and the courses and distances of the east boundary, and that portion of the north boundary east of Trinity River reported but not surveyed by him, viz: "Beginning at the southeast corner of the reservation at a post set in mound of rocks, marked "H.V.R. No. 3"; thence south  $17\frac{1}{2}$ ° west, 905.15 chains, to southeast corner of the reservation; thence south  $72\frac{1}{2}$ ° west, 480 chains, to the mouth of Trinity River," be, and hereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and the

land embraced therein, an area of 89,572.43 acres, be, and hereby is, withdrawn from public sale, and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864. (13 Stats. p. 39.)

The metes and bounds description of the reservation in this executive order encompassed substantially the same tract of land defined by Superintendent Wiley's more general description of February 18, 1865 (finding 21, *supra*), namely, an approximately 12-mile square tract bisected by a stretch of the Trinity River beginning at its junction with the Trinity River and continuing upstream for 12 miles for the extent of the Hoopa Valley.

Though the Commissioner in his letter of October 3, 1864 had cautioned Wiley to take special care in fixing the boundaries of the reservation "so that its proper limits may be of record in this office and the General Land Office, when approved by the President of the United States," the President's order is the first precise description of the reservation.

*1876-1891—The Peoples of the Hoopa Valley Reservation*

30. In 1875 and 1876, at about the time of the executive order formally defining the boundaries of the Hoopa Valley Reservation (preceding finding), there have been identified as living within the Hoopa Valley Reservation Indians the following tribes:

Tribe	1875	1876
Hoopes.....	871	811
Klamath.....	43	46
Redwoods.....	46	12
Saiaz.....	56	13

31. From 1877 to 1891 there appeared in the annual reports of the Commissioner of Indian Affairs a schedule of all reservations listing, for each reservation among other things, "tribes occupying or belonging to the reservation." For the Hoopa Valley Reservation the tribes named were Hunsatang, Hoopa, Klamath River, Redwood, Saiaz, Sermalton, Miskut and Tishtanatan. The Hunsatang, Sermalton, Miskut and

Tishtanatan were regarded as "bands" of Hoopas, closely related to them.

32. In 1886 the Indians living on the Hoopa Valley Reservation included Hoopa, Yurok, Karok and Redwood Indians, according to the first census of the reservation, described below in finding 37.

*The Enlargement of the Hoopa Valley Reservation by Executive Order in 1891*

33. On October 16, 1891, by executive order, President Harrison extended the "Hoopa Valley Reservation" to include a tract "one mile in width on each side of the Klamath River" from the then northern boundary of the "Hoopa Valley reservation" to the Pacific Ocean:

EXECUTIVE MANSION, October 16, 1891.

It is hereby ordered that the limits of the Hoopa Valley Reservation in the state of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April 8, 1864, (13 Stats., 39), be and the same are hereby extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; *Provided, however,* That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended.

BENJ. HARRISON.

34. President Harrison's order added to the Square the Klamath River Reservation, at the upper end of the Y's left arm (finding 22, *supra*), and the strip of land between the two reservations. The newly-added lands are herein called the "Addition."

The enlarged reservation consisted of the Addition, a tract 45 miles long x 2 miles wide, extending the length of the Y's entire left arm, joined to the 12-mile Square. The shape of the Addition and the Square combined was something like a square skillet with an extraordinarily long, thin handle.

In the enlarged reservation, the former Klamath River Reservation is herein called the "Lower Klamath Strip," and

the intermediate strip of land is called the "Connecting Strip."

The entire reservation as enlarged contained 147,740 acres, 25,000 in the Lower Klamath Strip, 33,168 acres in the Connecting Strip, and 89,572 acres in the Square.

*Access of Addition and Square Indians  
to the Enlarged Reservation*

35. After 1891 Indians living on the Addition freely fished and hunted and gathered basket materials on the Square, and Indians of the Square freely fished and gathered basket materials on the Addition. There is no evidence that this was not the case prior to 1891.

36. After 1891, Indians of the Addition attended the boarding school maintained by the Government at the Indian Agency at Hoopa, on the Square, and came for medical treatment to the Government hospital there. There is no evidence that this was not the case before 1891, and there is some evidence that Indians from elsewhere than the reservation also came to the hospital for medical treatment.

*Censuses on the Hoopa Valley Reservation*

37. The first census roll listing the individual Indians of the original Hoopa Valley Reservation was compiled in 1886 under the supervision of Superintendent Dougherty. It was prompted by the Act of July 4, 1884, 23 Stat. 98, which instituted a practice of the annual taking of a census of Indians upon reservations.

This first census roll was entitled "Census of the Different Ranches of the Hoopa Valley Indians." It (and all censuses until 1930) did not show the tribe of the listed Indian. However, the Indians listed included, in fact, members of the Yurok, Karok and Redwood tribes, as well as Hoopas.

38. The 1887 census on the Hoopa Valley Reservation was designated the "Census of the Hoopa Valley Tribe of Indians." In 1888 and 1889, the census was headed "Census of the Indians of the Hoopa Tribe." In 1890 it was on some pages headed "Census of Hoopa Valley Reservation Indians" and on others "Census of the Hoopa Indians."

The Indians listed in these censuses included members of

the Hoopa, Klamath River (Yurok and Karok) and Redwood tribes.

39. In 1892, the first year after the enlargement of the Hoopa Valley Reservation, and again in 1894, the reservation census was recorded in two parts. One part, variously called a census of the "Hoopa Indians of the Hoopa Valley Agency" and a census of the "Hoopa Valley Indians," listed the Indians on the Square, including the non-Hoopas resident there. The other part, called a census of the Klamath Indians of the Hoopa Valley Agency, listed the Indians on the Addition.

40. In 1893, and again in 1895, 1896, 1897, and 1899 (no census was taken in 1898; two were taken in 1899) only a census of the Indians on the Square was taken. In 1893 and 1899 it was called a census of the "Hoopa Indians," in the other years, a census of the "Hoopa Valley Indians." As before, it included the non-Hoopas on the Square.

41. The 1900 census of the Hoopa Valley Reservation intermingled in one list the Indians on the Square and on the Addition and was designated the "Census Roll of the Hoopa and Lower Klamath River Indians." These Indian names were as before not meant to be tribal but rather geographical; Karoks and Redwoods were included.

42. From 1901 through 1907, a census was taken only of the Indians on the Square. In these years the census was referred to as a "Census of the Hoopa Indians." As before, it listed Yuroks, Karoks and Redwoods in addition to Hoopas.

43. Beginning in 1910 and continuing each year through 1933, the census was recorded in three parts. One part was entitled "Census of the Hoopa Indians," another was the "Census of the Klamath River Indians of the Connecting Strip" and the third, "Census of the Lower Klamath River Indians." While most of those listed on the third part, "Census of the Lower Klamath River Indians," were of the Lower Klamath or Yurok tribe, the designation "Lower Klamath River Indians" did not refer to the Lower Klamath River or Yurok tribe as distinguished from the Upper Klamath River or Karok tribe, but rather meant the Indians on the Lower Klamath Strip. Most of those on the list entitled

"Census of the Klamath River Indians of the Connecting Strip" were Lower Klamath or Yurok Indians.

As before, the list entitled "Census of Hoopa Indians" listed the names of the Indians on the Square regardless of whether they were of the Hoopa, Yurok, Karok, Redwood or other blood.

44. Superintendent Keeley of the Hoopa Indian Agency wrote to the Commissioner on October 24 1929 that it was meaningless to divide the Indians supervised by the Agency into Hoopas, Klamath River Indians, Lower Klamath Indians and the other tribes of whom census rolls were prepared annually:

So far as these names are concerned and these divisions, they now mean nothing to us. At one time they possibly meant a division of the Indians so far as residence was concerned, but they have moved about so much and intermarried, and they have apparently been transferred at different times from one census to another until such division is absolutely worthless and confusing.

They have lost tribal affiliation to such an extent that very few of them know what tribe they belong to, and if they name a tribe, it is, in fact not a tribe but a band of Indians named after some local name of a place where they once resided. This division has resulted in many duplications, we found when the enrollment of California Indians was made by Mr. John H. Anderson.

I am now asking authority to revise this census and make up a new one, corrected in accordance with the affidavits furnished Mr. Anderson as to families, same to be a strictly alphabetical roll of the Indians under the jurisdiction of the Hoopa Valley Agency without the divisions noted above.

45. The census forms were revised for the year 1930 to include a space for designating the tribe of the individual to be listed, but the tripartite division was retained. The provision of a space for the tribe of the person listed did not appreciably improve the accuracy of the census as an indicator of tribal affiliation. Those listed on the part of the census entitled "Census of the Hoopa Indians" were nearly always designated as a member of the Hoopa tribe even though they were actually Lower Klamath (Yurok), Upper Klamath (Karok), Redwood Indians or of the blood of more

than one tribe. The individuals on the part entitled "Census of the Klamath River Indians" were designated as members of the Klamath River tribe and those on the census part entitled "Census of the Lower Klamath River Indians" were designated as members of the Lower Klamath tribe.

46. Some censuses listed off-reservation people, with off-reservation addresses. From about 1930, inclusion in the census was based not on residence but upon a concept of enrollment on the reservation equivalent to entitlement to be regarded as a reservation Indian (see findings 199, 207, 211, *infra*).

47. On January 12, 1933 Special Agent Roblin reported that the census rolls of Klamath River and Lower Klamath River Indians were inextricably mixed. Intermarriage and changes of residence had resulted in changes of names from one roll to another. Some of the confusion came, he said, from the use of the words Lower Klamath, the name of the strip constituting the former Klamath River Reservation; the Indians themselves referred to all Indians living below a village near the junction of the Klamath and Trinity as "lower Klamaths," which would leave all of the original Klamath River Reservation and the Connecting Strip in "Lower Klamath" country. The text of the relevant "Note" to his letter is set out in finding 94, *infra*, in another connection.

48. The tripartite division of the roll was ended in 1933. From that year until the last complete reservation roll was compiled in 1940, the Hoopa Valley Reservation roll was in a single part. The Indians designated as of the Hoopa tribe and as of the Klamath River tribe were intermingled, the designation Lower Klamath was dropped entirely. The roll continued to designate nearly every Indian residing on the Square as of the Hoopa tribe whether or not he actually was of Hoopa blood. In a few instances, mixed-blooded Indians were designated as Hoopa-Klamath. On the 1940 roll, the designation Yurok was substituted for Klamath River. No roll was compiled in 1941. In the years 1934, 1935, 1938, 1939 and 1942 only supplementary rolls were compiled. No rolls were compiled thereafter.

*Background of the 1891 Executive Order and the Act of  
June 17, 1892*

49. (a) For about 20 years prior to the 1891 executive order there had been repeated recommendations by various officers that a reservation be established along the Klamath River for the Indians living there or that the Hoopa Valley Reservation be enlarged to encompass parts or all of the land bordering on the Klamath to the Ocean. Some of these recommendations are described in the following subparagraphs.

(b) A report of Special Commissioner John V. Farwell to the Commissioner in 1871 urged that the efforts of the Government to civilize the Indians would be facilitated by the extension of the Hoopa Valley Reservation to the mouth of the Klamath River so as to include the Klamath Indians.

(c) The report of Superintendent of Indian Affairs, California, B. C. Whiting, for 1871 states: "I would therefore respectfully recommend that the Hoopa Reservation be so extended as to take the [Klamath] river and the land for 3 miles back upon both sides to the Pacific Ocean, and thereby include the Klamaths, without requiring any to remove, other than those who may prefer to live at Hoopa."

(d) A report of September 1, 1871 from D. H. Lowry, Indian Agent, Hoopa Valley Reservation, states his belief that the some 2,500 Indians along the Klamath are well disposed towards the whites, deserving of assistance and come to the reservation for help in respect of crops, farming implements and otherwise, which he is unable to provide as he would like to, and which he recommends be provided. "I would also recommend that all the lands lying along the Klamath River, from a point 2 miles above the mouth of the Trinity River, extending back to the summits of the mountains on either side, be annexed to the Hoopa reservation, and be declared a part of the same."

(e) The report of the Commissioner of Indian Affairs to the Secretary for 1872 states the recommendation of the Superintendent of Indian Affairs, California, that the Hoopa Valley Reservation be extended to include the Klamath Indians who lived adjacent to the reservation along the

banks of the Klamath and formerly belonged to the abandoned Klamath River Reservation.

(f) In 1885 Special Agent Paris H. Folsom conducted an investigation of apprehended troubles between whites and the approximately 200 Klamath Indians in 14 villages on the banks of the Klamath River between the Klamath River Reservation and the Hoopa Valley Reservation. He recommended that a 2-mile wide tract of land centering on the river between the two reservations be set aside for the sole use and possession of those Indians, and that the lands then be given in trust to the Indians. The Commissioner attached this report to his report to the Secretary for 1885, saying that he would make suitable recommendations for protection of the Indians in respect of their lands.

50. At the same time as these recommendations that a reservation be created along the Klamath, a movement was going on in Congress to open the lands of the Klamath River Reservation, as an abandoned reservation, to public entry and sale. The bills in Congress for this purpose, introduced from 1879 on, were steadily opposed by the Department of the Interior, which maintained that the Klamath River Reservation was not abandoned, was still in a state of reservation and that the homes of its Indians needed protection. The Department conditioned its willingness to agree to public sale on the bills being amended to protect the Indians by providing for the allotment of land to them in severalty, before public sale of the remaining lands.

51. The first bill for the public entry and sale of the Klamath River Reservation, in 1879, provided that the Klamath River Reservation "is hereby abolished" and directed the Secretary of the Interior to have the lands surveyed and opened to homestead, pre-emption entry and sale, "the same as other lands." S. Res. 34, 46th Cong., 1st Sess. (1879); 9 Cong. Rec. 1651 (1879).

52. No action having been taken on this bill, another, with the same provisions, was next introduced in 1880. 10 Cong. Rec. 286 (1880); H.R. 3454, 46th Cong., 2d Sess. (1880). The House committee report on this bill declared that the establishment of the reservation in 1855 had been a mistake and an injustice, because it blocked access of the adjoining lands to the river; that the reservation had been abandoned

after the flood of 1861, and that the Indians had been removed to Smith River and then to the Hoopa Valley Reservation "where they were permanently located." The report set out a letter from the Office of Indian Affairs in 1874, signed by Commissioner Shuter, stating that the flood in 1861 had rendered the reservation worthless and that the reservation "has not been used for any public purposes since the freshet referred to and the department has no claim upon it." H.R. Rep. No. 1354, *supra*, 2.

The report continued that white settlers had in reliance on this letter improved their homes and buildings but that nevertheless at the instance of the Department of the Interior in 1877 the War Department forced the settlers to leave the reservation; that the Indians now there did not belong there but belonged on the Hoopa Valley Reservation; that the area was extremely fertile and timbered and suitable for wine and fruit and timber-cutting, none of which could be developed because the reservation blocked access to the natural highway, the navigable Klamath River.

The report concluded (H.R. Rep. No. 1354, *supra*, 5) :

It is the opinion of the committee, after careful investigation, that the government can have no use for these lands as an Indian reservation. The Hoopah Reservation, to which the Indians were removed and settled upon after the freshet in 1862, is located but 15 miles from the abandoned Klamath Reservation, and is capable of sustaining many thousands more of Indians than are now located upon it. Why, then, should these lands in question be kept from settlement and improvement by white citizens who are eager to expend their labor and means in the development of their resources?

If there be no use for this abandoned reserve for the purposes originally intended, the committee can see no valid reason why it should not be restored to the public domain, and again made free for the access of labor and capital of white settlers seeking homes and fields for their energy and enterprise. Entertaining this view, after an impartial and careful consideration of all the evidence submitted, they are constrained to report in favor of the measure, and they therefore return the bill to the House, with the recommendation that it pass.

The report did not mention (as appeared in a report in the next session) that the Indian Office opposed the bill. H.R. Rep. No. 1148, 47th Cong., 1st Sess. 1 (1882).

The bill as reported was recommitted and no further action was taken on it. 10 Cong. Rec. 3126 (1880).

53. An identical bill was introduced in the following Congress (H.R. 60, 47th Cong., 1st Sess. (1881)) and upon reference to the Office of Indian Affairs was there approved with an amendment providing for allotments to the Indians. 13 Cong. Rec. 90, 3414 (1882). Commissioner Hiram Price's letter of comment on the bill, dated March 24, 1882, stated (H.R. Rep. No. 1148, 47th Cong., 1st Sess. 2 (1882)):

To return to the consideration of the bill: The lands embraced within the said reservation are not needed (as a reservation) for Indian purposes, but that the Indians residing thereon should be protected in the peaceful occupancy and enjoyment of their homes, to which they have become much attached, and where they have gained a livelihood unaided by the government for more than a quarter of a century, is certainly beyond dispute.

In order to effect this, I have to recommend that a further provision be added to the bill, at the end thereof, in substance as follows:

"That before any of the foregoing provisions except that authorizing and directing the Secretary of the Interior to have the lands embraced in said reservation surveyed, shall be held and deemed to be in effect, there shall be selected and allotted to each Indian belonging to and residing upon said reservation, lands within the limits of said reservation as follows:

"To each head of family one quarter-section.

"To each single person over eighteen years of age, one-eighth of a section.

"To each person under eighteen years of age, one-sixteenth of a section."

\* \* \* \* \*

With the amendment above proposed, I see no objection to the passage of the bill. \* \* \*

The committee report also contained a letter dated September 26, 1881 from Lt. Gordon Winslow of the Army, the Acting Indian Agent. Lt. Winslow stated that a census of the Indians just taken under military auspices reflected the presence of 213 Indians on the Klamath River Reservation. The census, he said, was "as nearly accurate as it can well be"; his earlier report, in the same year, of 115 Indians was, he said, based on information from civilians "who are, I believe, somewhat inclined to lessen the number, thinking

doubtlessly that the smaller the number the greater the likelihood of its being thrown open to settlers."

The committee approved the bill with the amendment suggested by the Commissioner. No action, however, was taken by the House.

54. The next three bills, in 1883 and 1884, in the 48th Congress, acceded to the desires of the Interior Department. The bills assumed that the Klamath River Reservation was in existence and provided that allotments to the Indians should be made before the land was to be opened to white settlement as public land. H.R. 112, 48th Cong., 1st Sess. (1883); H.R. 7505, 48th Cong., 1st Sess. (1884), reported by the Committee on Indian Affairs as a substitute for H.R. 112; S. 813, 48th Cong., 1st Sess. (1883). These bills "abolished" the Klamath River Reservation and directed that the lands embraced therein be surveyed and "made subject to homestead and pre-emption entry and sale the same as other public lands," with, however, a proviso that before this was done there should be allotted land in stated amounts to the Indians belonging to and residing within the reservation.

55. Perhaps encouraged by the prospects of these bills, the Indian Bureau in 1883 began the work of allotment of Klamath River Reservation land, and selections were made by the Indians under the supervision of the Agent at Hoopa Valley. (The allotments fell through, however, when the surveys were found to be erroneous and fraudulent.)

56. None of the three mentioned bills (finding 54, *supra*) was enacted. The report of the Commissioner of Indian Affairs for 1885 says that it is "presumed that they were not reached in the regular course of business before adjournment." The Commissioner added that:

It is my intention to ask at an early day for legislation suitable to the wants of these Indians. They do not need all the lands at present reserved for their use, but they should be permanently settled, either individually or in small communities, and their lands secured to them by patent before any portion of their reservation is restored to the public domain.

57. On December 21, 1885 identical bills were introduced in the House, repeating the provisions of the three bills intro-

duced in 1883 and 1884 (finding 54, *supra*). H. R. 158 and 165, 49th Cong., 1st Sess. (1885); 17 Cong. Rec. 370 (1885). No action was taken.

58. The years 1886 through 1889 saw no further bills for the sale of the Klamath River Reservation. Other significant developments, however, occurred. Congress in 1887 passed an act providing generally for allotments of reservation land to Indians in severalty and the federal courts in 1888 ruled that the Klamath River Reservation did not have the legal status of an Indian reservation. Both developments are discussed in the immediately following findings.

59. The General Allotment Act of February 8, 1887 (24 Stat. 388) authorized the President to survey the lands of any Indian reservation created by treaty, statute or executive order and "to allot the lands in said reservation in severalty to any Indian located thereon." As soon amended by the Act of February 23, 1891 (26 Stat. 794) each Indian was to receive  $\frac{1}{8}$  of a section (or 80 acres), the acreage to be doubled in size where the land was valuable only for grazing.

60. A case now arose of a commercial fisherman named Hume who employed Indians to fish in the Klamath River within the boundaries of the Klamath River Reservation, and paid them with goods. The Department of Interior, desirous of protecting the reservation from such intrusions, caused the prosecution of a libel against his goods, for unlicensed trading in an "Indian reservation" or in "Indian country" in violation of R.S. § 2133, as amended July 31, 1882 (22 Stat. 179).

61. The Government's position was set out in detail in a letter of April 4, 1888 from Commissioner J. D. C. Atkins, which the United States Attorney presented to the district court on the hearing of the case. On a review of the history of the reservation, the Commissioner concluded that the Klamath River Reservation was regarded by the Department "as in a state of Indian reservation," under the supervision of the Hoopa Valley Indian Agency.

Commissioner Atkins quoted from a letter from Superintendent Wiley of January 19, 1865, in connection with the location of the reservation at Hoopa Valley, that it was his "present purpose" to locate the Indians then at Smith River "upon the land formerly occupied as an Indian reservation upon the Klamath River, and which was abandoned in 1861,

but is still reserved by the Government. The Hoopa Reservation will either be extended so as to cover this point, or it will be kept up as a station attached to that reservation and under the control of the same agent." Commissioner Atkins said that this letter showed that the plan of the Superintendent was to "annex the Old Klamath River Reservation (with which we are now especially concerned), to the new Hoopa Valley Reservation." "I find," he concluded, "that this office warmly commended and approved the superintendent's course."

The Commissioner also quoted from letters from former Commissioners to the Secretary of August 14, 1877 and March 8, 1878, stating that when the Agency at the Klamath River Reservation moved to the Smith River Indian Reserve and the Indians (with the exception of one band) refused to leave (finding 8, *supra*), "it was not deemed advisable to recommend its [the reservation's] restoration to the public domain," and that "In view of these facts the reservation should, in my opinion, be preserved intact until some measures are devised for the permanent settlement" of these Indians."

62. The district court on June 7, 1888, nevertheless dismissed the libel, with an opinion holding that the Klamath River Reservation did not have the legal status of an Indian reservation, although, the court also held, the reservation was not open to public entry as public lands. The act of 1864 (finding 10, *supra*), the court held, had authorized the creation of four reservations; lands of old reservations not set apart within the four new reservations were under section 3 of the act not subject to the operation of the general land laws but reverted to the control of the Secretary of the Interior, for survey and sale at auction. The President, the court continued, had in various orders and modifications of orders exhausted his authority under the act by the creation of four reservations—the Tule River Reservation, the Hoopa Valley Reservation (as to which, the court said, a suggestion that it include the Klamath River Reservation was not adopted), the Round Valley Reservation and Reserves for Mission Indians—and the Klamath River Reservation not having been included in any of the four reservations, the lands of that reservation were under section 3 of the act

relinquished "for the purposes of Indian reservations," and came into the possession of the United States for the survey and sale provided for by that section. *United States v. Forty-Eight Pounds of Rising Star Tea etc.*, 35 Fed. 403 (D.C.N.D. Calif. 1888).

63. The Secretary of the Interior requested that the Attorney General appeal the foregoing decision of the district court. In the Secretary's annual report for 1888 he said that in order to protect the Indians, authority ought at once be given, during the pendency of the appeal "to set apart these lands as a reservation and thus remove all doubt."

64. On January 14, 1889, while the Hume case was pending on appeal, another bill was introduced in the House to open the Klamath River Reservation to public sale. H.R. 12104, 50th Cong., 2d Sess. (1889); 20 Cong. Rec. 756 (1889). Perhaps in response to the district court's ruling that the reservation had lost its status as an Indian reservation but had not become public land, rather having come into the possession of the United States, under the act of 1864, for the purposes of survey and sale, the bill provided that the reservation should be regarded for the purposes of the act as in a state of reservation within the meaning of the General Allotment Act of 1887 (finding 59, *supra*), and lands should be allotted to the Indians pursuant to that act, before public sale took place. Further, that surplus lands after allotment, despite the contrary provisions of the General Allotment Act, would be deemed to be and held as public lands subject to the laws for the disposition of public lands.

No action was taken on the bill.

65. (a) Shortly thereafter, and while the Hume case was still pending on appeal, the Senate by resolution of February 13, 1889 (20 Cong. Rec. 1818 (1889)) directed that the Secretary of the Interior inform it as to what proceedings had been taken for the survey and sale of the Klamath Indian Reservation, presumably the survey and sale which the district court had held was now the province of the Secretary. The Secretary's response, in the form of letters from the Commissioners of Indian Affairs and the Land Office, was that no such proceedings had been taken, because the lands had been in a state of reservation continuously since 1864.

(b) The letter from Commissioner of Indian Affairs John H. Oberly, dated February 18, 1889, stated:

In response to said resolution, I have to state that I am unable to discover from the records or correspondence of this office that any proceedings were ever had or contemplated by this Department for the survey and sale of said reservation under the provisions of the act aforesaid: on the contrary, it appears to have been the declared purpose and intention of the superintendent of Indian affairs for California, who was charged with the selection of the four reservations to be retained under said act, either to extend the Hoopa Valley Reservation (one of the reservations selected under the act), so as to include the Klamath River Reservation, or else keep it as a separate independent reservation, with a station or subagency there, to be under control of the agent at the Hoopa Valley Reservation, and the lands have been held in a state of reservation from that day to this.

(c) The letter from the Commissioner of the Land Office, dated February 28, 1889, advised that surveys of the Klamath River Reservation were made in 1882; that in a letter of April 4, 1883 to the Secretary, the Commissioner of Indian Affairs "recommended that allotments be made to the Klamath River Indians based upon the public surveys herein stated, and that the rest of the reservation be restored to the public domain"; that attempts were made in 1884 by the Indian Office to make allotments using the surveys made but that on examination the surveys were found to be irregular and fraudulent and the allotments made were recommended for cancellation by the Indian Commissioner; and, finally, that resurveys had been made and were still under examination.

66. On April 1, 1889, the circuit court affirmed the decision of the district court in the Hume case, under the same title, in 38 Fed. 400 (C.C.N.D. Calif. 1889). The opinion of the circuit court was essentially the same as that of the district court (38 Fed. 400-1):

The president did thereafter [after the act of 1884] act from time to time, and he did set off four tracts in different parts of the state for the purposes provided for, and he did not include in any one of them the "Klamath Indian Reservation," theretofore set apart. In setting apart these four reservations without including the

Klamath reservation, he necessarily exercised his discretion, and, by implication at least, excluded them. As they were not retained by the future and further action of the president "for the purposes of Indian reservations," "under the provisions of the preceding sections of this act," the reservation, by the terms of the act itself, abolished or abrogated the prior reservation. This necessarily follows from the provision requiring these lands not embraced in the reservations made by the action of the president under that act to be cut up into lots of suitable size and sold, as provided in the act.

67. In December 1889 and January 1890 identical bills introduced in the House and Senate provided, simply and without mention of allotments, that "all of the lands in what was the Klamath River Reservation" are "declared to be subject to settlement, entry, and purchase" under the land laws. H.R. 113, 51st Cong., 1st Sess. (1889); 21 Cong. Rec. 229 (1889); S. 2297, 51st Cong., 1st Sess. (1890); 21 Cong. Rec. 855 (1890).

The bills were opposed in a report by the Indian Office dated October 15, 1890 (described some months later in a letter of January 7, 1891 from Commissioner Morgan to the Secretary), recommending that the bill be amended to provide for allotments to the Indians under the General Allotment Act, the surplus unallotted lands to be restored to the public domain and the funds from the disposal of the lands to be put to the credit of the Klamath River Indians. With such a provision for allotments, the Indian Office said, it would not object to the sale of the surplus lands. Without it, the Office would "stranguously oppose" sale of the land:

In no event should the bill under consideration, or any other like measure be adopted unless provision is made for the allotment of lands in severalty to the Indians and some means provided to enable them to get a start in agricultural pursuits, and for the education of their children. With such protection and assistance secured to them, this office would interpose no objection to the disposal of the surplus unallotted lands as provided in the bill under consideration. But it would feel bound to stranguously oppose any measure looking to the opening of the lands of said reservation to settlement or sale that did not secure to the Indians permanent title to their homes, which can best be done by allotting lands in severalty to them as hereinbefore recommended.

68. Amendment of the bill as urged by the Indian Office was emphatically rejected by the House Committee on Indian Affairs. On April 1, 1890 the Committee reported H.R. 113, still providing for public sale, but with an amendment affirmatively rejecting any allotments on the Klamath River Reservation. The amendment provided that the Indians on the Klamath River Reservation be removed to the Hoopa Valley Reservation and there allotted, and that the proceeds from the sale of the lands be a fund to be used by the Secretary of the Interior for the "*removal, maintenance, and education*" of the Indians residing on the lands and their children. (Emphasis added; H.R. Rep. No. 1176, 51st Cong., 1st Sess. 2 (1890).) In this form the bill passed in the House, in September, 1890 (21 Cong. Rec. 10702 (1890)) and in the Senate was referred to committee (21 Cong. Rec. 10740 (1890)). The Senate took no action, either on the bill as first introduced or as it passed in the House.

69. The passage of a bill so flatly rejecting allotment and providing for public sale spurred the Department of the Interior to action. On December 23, 1890 the Secretary suggested to the Commissioner of Indian Affairs that he "consider the question whether a reservation should not be made for the Klamath River Indians, \* \* \* and if so, you will please prepare the proper description and orders for the purpose."

70. Commissioner Morgan responded promptly, on January 7, 1891, and at length. Reviewing the establishment of reservations in California under the act of 1864 (finding 10, *supra*), he raised a question as to whether four reservations were in fact established under that act. The Smith River Reservation, he said, was intended to be only temporary and the Tule River Reservation was simply leased and not set apart under the act. His implication was that, contrary to the premise of the decision in the Hume case (findings 62, 66, *supra*), the President had not exhausted his authority under the act of 1864 to create four reservations in California.

He also discussed the proposed legislation to sell publicly the lands of the Klamath River Reservation, and the opposition of the Department of the Interior unless the bill were amended to provide first for allotments of land thereon

to the Indians in severalty, and urged further efforts to cause the enactment of the legislation favored by the Department, i.e., for allotment of lands to the Indians resident there and sale of the surplus lands, with the proceeds to be used for the benefit of the Indians. As to non-reservation Klamath Indians, resident between the Hoopa Valley Reservation and the Klamath River Reservation, he noted and restated Agent Folsom's recommendation (finding 49(f), *supra*) that the connecting strip of land between the two reservations be set aside for Indian use.

He concluded by saying that he would prepare whatever papers were requested, but that he was not prepared to recommend the establishment of a new reservation unless the Klamath's reservation was endangered, in which case the Hoopa Valley Reservation should be extended along the Klamath to the ocean:

\* \* \* If it shall be found that by the decisions of the courts or through the failure of Congress to act, the Klamaths are likely to loose [sic] the reservation established in 1855, it may become expedient to extend the Hoopa Valley reservation so as to include lands on both sides of the Klamath River, two miles in width on each side, from that reservation to the mouth of the river.

71. The Secretary thereupon sought the opinion of Assistant Attorney General George H. Shields, assigned to the Department of the Interior. Mr. Shields' opinion, dated January 20, 1891, responded as well to inquiries put to him earlier. He considered three questions: (1) "whether the Department is authorized to cause the removal of intruders from said [Klamath River] reservation"; (2) "whether the lands within the limits of said reservation can be allotted to the Indians living upon them, as reservation Indians, or under the legislation providing for allotments to non-reservation Indians"; and (3) the Secretary's immediate question, "whether the Hoopa Valley Reservation may not be legally extended so as to cover the ground of the Klamath Reservation."

The opinion described the creation of the various reservations under the act of 1864, particularly pointing out that reservations had been created of noncontiguous parcels and

by orders and successive orders revoking and amending earlier orders and setting aside substituted lands as reservations, and continued:

Three conclusions inevitably flow \*\*\*: 1, that no formal order of the President retaining an existing reservation was deemed necessary, but its [the Tule River Reservation] actual retention by the officers of the Indian Bureau was sufficient to constitute it one of the four authorized reservations; 2, that contiguity was not an essential, but a reservation might be composed of several noncontiguous parcels of land; and, 3, that the Executive authority, in that respect, was not exhausted when once exercised in the setting apart of "four tracts" or parcels of land, as reservations; but that discretion continued, and yet exists, to change, add to, diminish or abolish reservations and establish others, as may seem most promotive of the public interests.

In relation to the Klamath River reservation, as in that of the Round Valley, no formal or written order appears to have been issued for its retention. In both of these instances the Indian office retained possession and control of the former reservations, making no change in their condition, status or management, further than that they passed under control of the one State Superintendent as required by the act of 1864. The Indians remained in the occupation of both of these reservations, and yet so occupy them alone, except so far as that occupation may have been intruded upon by individual white man, under color of claims. Congress has made annual appropriations for support of the Indians on the Round Valley reservation, but none for those on Klamath, and for the all sufficient reason that the latter are self-supporting and have never cost the government a dollar in this respect.

Mr. Shields then turned to a detailed statement of the "special circumstances" showing, he believed, that the Department had retained the Klamath River Reservation under the act and that it was a part of the Hoopa Valley Reservation.

Among the circumstances he relied upon were the following:

(a) The letter of January 19, 1885 from Superintendent Wiley to the Commissioner, stating that it was his intention to extend the Hoopa Valley Reservation so as to include the Klamath River Reservation "or it will be kept up as a sta-

tion attached to that reservation and under control of the same agent" (finding 61, *supra*). This disposition, Mr. Shields noted, was approved by the Commissioner in his annual report for 1865.

(b) The Commissioner's letters of August 14, 1877 and March 8, 1878 to the Secretary, already quoted in finding 61, *supra*.

(c) The statement by the Secretary in his annual report for 1888 (at p. 76) that:

Indians have continued to reside on the Klamath River lands, and those lands have been and are treated as in a state of reservation for Indian purposes, the jurisdiction is under the U.S. Indian agent for the Hoopa Valley agency.

(d) The rejection by the Commissioner in 1883 of an offer to lease the salmon fisheries of the Klamath River and to cut timber on its lands, with a statement that "The reservation is still in a state of Indian reservation, and must so remain, uninterfered with, until otherwise ordered by competent authority."

(e) The circumstances of the approval by the Secretary, in 1883, of a recommendation that allotments be made to the Indians of the Klamath River Reservation (see findings 55, 65(c), *supra*) and the circumstance that in the same year the Secretary, in an appeal in a Land Office proceeding involving the lands of the Klamath River Reservation (2 L.D. 460) had held that the lands were since the act of 1864 regarded as in reservation, noting that allotments had been made and that when the selections were all made he would consider the question of restoring the remainder to the public domain. The allotments which had been made were abandoned when the underlying survey was found to be erroneous and fraudulent. Another survey was made in 1886 and meanwhile land officers were instructed to permit no entries or filings on Indian lands.

Mr. Shields stressed that the Mission Reservation, created under the same act as that under which the Hoopa Valley Reservation was created, was in accordance with orders of four Presidents composed of 19 different noncontiguous parcels.

On the basis of the foregoing data and considerations, Mr. Shields gave his opinion that the Klamath River Reservation was part of the Hoopa Valley Reservation, one of the four reservations authorized by the act of 1864, and that intruders could therefore be removed. It followed, he said, that the Indians thereof could be allotted under the General Allotment Act of February 8, 1887 (finding 59, *supra*).

Mr. Shields then turned to the district court opinion in the Hume case, which he recognized to be contrary to his opinion, and a remedy for the defect the court had found in the status of the Klamath River Reservation. The opinion itself was distinguished as *dictum*; the decision was said to be correct for the reason that the Klamath was a navigable stream from which fisherman could not be excluded.

The principal reason underlying the district court's opinion was, in the view of the Assistant Attorney General, the absence of an executive order setting aside the reservation as part of the Hoopa Valley Reservation, an omission which could easily be supplied by an order, which the Assistant Attorney General held would be lawful, extending the Hoopa Valley Reservation to cover the area of the Klamath River Reservation:

Judge Hoffman concedes that the lands in question are yet in reservation, though not for Indian purposes; that they constitute a reservation in fact, but not in law; and the principal reason why the legality is questioned appears to be because there was no formal executive order setting apart or retaining it as part of the Hoopa Valley reservation. This difficulty may yet be removed by the President issuing a formal order, out of abundant caution, setting apart the Klamath river reservation, under the act of 1864, as part of the Hoopa Valley reservation, or extending the lines of the latter reservation so as to include, within its boundaries, the land covered by the former reservation, and the intermediate lands, if the title to the last be yet in the United States. Such an order would be in accordance with the precedents in relation to the Tule river, Round Valley, and Mission reservations, the legality of which, as herein shown, has been repeatedly recognized by the legislative and executive branches of the government. I am therefore of the opinion that the Hoopa Valley reservation "may be legally extended, so as to cover the ground of the Klamath reservation."

72. On January 21, 1891, the day following Assistant Attorney General Shields' opinion to the Secretary, the Secretary requested the Commissioner to prepare the necessary orders for extension of the Hoopa Valley Reservation.

73. The response was delayed until May 5, 1891; Acting Commissioner Belt explained that the reason for the delay was that "a bill for the disposition of the Klamath reservation was pending, which it was thought might become a law with amendments satisfactory to the Department." (This was presumably a reference to possible Senate action on the bill passed in the House in September 1890 in the 51st Congress (finding 68, *supra*).) The response transmitted to the Secretary a draft of an executive order which provided for extending the Hoopa Valley Reservation to include a tract of land 1 mile in width on each side of the Klamath River from the present limits of the reservation to the Pacific Ocean. Acting Commissioner Belt implied that he had adopted the suggestion of the Assistant Attorney General—that an extension include the land between the two reservations—because of Agent Folsom's report on the Indians of the intermediate strip (finding 49(f), *supra*).

74. On October 12, 1891, Secretary Noble transmitted to the President, requesting his signature, a draft of the executive order extending the Hoopa Valley Reservation. Among the enclosures was Assistant Attorney General Shields' opinion (finding 71, *supra*), which, the Secretary said, contained a history of the reservation and "the reason for the issuance of an order in the premises."

75. Four days later, on October 16, 1891, President Harrison signed the executive order; its terms, set out in finding 33, *supra*, extended the boundaries of the Hoopa Valley Reservation to include the Klamath River Reservation and the Connecting Strip between the two reservations.

76. Congressional proponents of public sale of the Klamath River Reservation did not cease their efforts on the issuance of the executive order incorporating the Klamath River Reservation into the Hoopa Valley Reservation. Either unaware of or indifferent to the executive order, they continued to press for the public sale of the lands of the Klamath River Reservation and, in the House, even to forbid allotment to the Indians thereof.

77. On January 5, 1892, 3 months after the executive order was signed on October 16, 1891 (finding 75, *supra*), H.R. 38 was introduced in the House, declaring that all of the lands embraced in "what was the Klamath River Reservation" were to be subject to settlement, entry and purchase, with a proviso that the proceeds of sale should be a fund used by the Secretary for the "removal, maintenance and education" of the resident Indians. H. R. 38, 52d Cong., 1st Sess. (1892); 23 Cong. Rec. 125 (1892).

The House committee reported the bill with only an amendment changing the last-quoted phrase to read "removal, maintenance *or* education." The committee report took the strong position that the reservation had been abandoned, as had been held by the federal courts, and that it was useless to allot any of its lands to the resident Indians, estimated by the report to be from 50 to 100 in number, because the Indians were "semicivilized, disinclined to labor, and have no conception of land values or desire to cultivate the soil"; that even if it were wise to allot lands to such Indians, these lands were unsuitable, whereas the nearby Hoopa Valley Reservation was adapted for allotments; and finally that while the Indians had not been cared for by the Government since 1861-62, the Government might hereafter desire to do so, and for this purpose the proceeds of the sale of the lands should be a fund, for their removal, maintenance and education. H. R. Rep. No. 161, 52d Cong., 1st Sess. (1892). No mention was made, in the report or in the brief debate in the House (see 23 Cong. Rec. 1599 (1892)), of any extension of the boundaries of the Hoopa Valley Reservation to include the Klamath River Reservation, of the Executive Order of October 16, 1891 effecting that extension, or of any recent change in the status of the Klamath River Reservation.

The bill as reported passed the House (23 Cong. Rec. 1599 (1892)) but in the Senate was stricken and another version substituted so as to delete the reference to removal of the Indians and to provide that before public sale, the lands should be allotted under the General Allotment Act of 1887 as amended. In this, the Senate Committee "had the recommendation of the Interior Department to draw the bill as it is reported." 23 Cong. Rec. 3918 (1892). As so amended the bill passed both House and Senate and became the Act of

June 17, 1892, 27 Stat. 52. Neither the brief debate nor the two conference reports contain any mention of an extension of the boundaries of the Hoopa Valley Reservation, the 1891 executive order or of any recent change in the status of the Klamath River Reservation. 23 Cong. Rec. 4225, 7771 (1892); 23 Cong. Rec. 3918-19 (1892). There was a reference in the Senate debate to a nearby reservation, doubtless the Hoopa Valley Reservation, "where these Indians [of the Klamath River Reservation] can go if they want to." 23 Cong. Rec. 3918, *supra*.

The proviso for allotments reads as follows (27 Stat. 52):

*Provided*, That any Indian now located upon said reservation may, at any time within one year from the passage of this act, apply to the Secretary of the Interior for an allotment of land for himself and, if the head of a family, for the members of his family, under the provisions of the act of February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and, if found entitled thereto, shall have the same allotted as provided in said act or any act amendatory thereof:

With elimination of the word "removal," the last proviso, with respect to the proceeds of public sale, reads as follows (27 Stat. 53):

*Provided further*, That the proceeds arising from the sale of said lands shall constitute a fund to be used under the direction of the Secretary of the Interior for the maintenance and education of the Indians now residing on said lands and their children.

#### *Allotments on the Hoopa Valley Reservation*

78. (a) At the time of the issuance of the Executive Order of October 16, 1891 extending the boundaries of the Hoopa Valley Reservation to include the Klamath River Reservation and the enactment of the Act of June 17, 1892 for allotment and public sale of the lands of the Klamath River Reservation, the situation as to allotments on the now three parts of the Hoopa Valley Reservation was as follows.

(b) On November 29, 1887, within the year of the enactment of the General Allotment Act of 1887 (finding 59,

*supra*), executive authority had been given for surveys preliminary to allotments in the Hoopa Valley Reservation, then consisting of the Square only. The survey was under way in 1889 and allotments were made temporarily until the survey could be completed.

(c) Preliminary work for allotments on the Klamath River Reservation had been begun in 1883 and fallen through (findings 55, 65(c) and 71, *supra*). Presidential authorization would be unnecessary for such allotments, for the act of 1892 (preceding finding) had supplied the requisite authority by its direction that allotments on those lands take place in accordance with the General Allotment Act.

(d) Presidential authority would be necessary for allotments on the Connecting Strip, land which had never before had reservation status. Such authority was soon supplied, and work on allotments on all three parts of the enlarged reservation continued and undertaken; it was executive policy to make the allotments on the reservation permitted by law (and in the case of the tract constituting the former Klamath River Reservation it was also the Congressional mandate).

79. The instructions to the allotting agents in the field, the accompanying departmental and Presidential correspondence, and the allotments made are the subjects of the following findings.

80. Allotments on the former Klamath River Reservation and the Connecting Strip were first brought up, after the enactment of the Act of June 17, 1892, by instructions proposed to be sent to the allotment agent. Such instructions were submitted for approval by Acting Commissioner Belt to Secretary Noble on September 23, 1892. The instructions are quoted in the finding next following, at the point of time when they were approved and dispatched.

On September 29, 1892 the Secretary reported to the President and requested authority for allotments on the Connecting Strip, as follows:

By Executive Order of October 16, 1891, the limits of the Hoopa Valley Indian Reservation, in California, were extended so as to include a tract of country one mile in width on each side of the Klamath River and extending from the present limits of the said reservation to the Pacific Ocean.

By the Act of June 17, 1892 (Public No. 84), the lands in what was the Klamath River Reservation, in California, comprising a strip of country one mile in width on each side of the Klamath River commencing at the Pacific Ocean and extending up said river a distance of twenty miles, may be allotted and reserved as therein provided.

It is reported by the Commissioner of Indian Affairs that not more than forty allotments will be claimed by Indians who are residents on the original Klamath River Reservation, but that four hundred and seventy-five Indians reside on the strip of country between the two original reservations and on this strip there are several so-called Indian villages.

The Commissioner is of opinion that when the lands are allotted under the Act of June 17, 1892, allotments should also be made to the Indians on the strip.

Concurring in the views of the Commissioner, I have the honor to recommend that authority be granted for allotments in severalty under the Act of February 8, 1887, as amended by the Act of February 28, 1891, to the Indians on the strip of country added to the Hoopa Valley Indian Reservation in California by Executive Order of October 16, 1891, except that portion embraced within the original Klamath Reservation, on which allotments are authorized by the act referred to, and for the necessary surveys, and that your authority be endorsed hereon.

President Harrison approved, on September 30, 1892, by signing a memorandum presented by the Secretary reading "Relative to allotments to Indians located on strip of country added to Hoopa Valley Reservation, California, and for necessary surveys of same."

On October 8, 1892 the Secretary transmitted to the Commissioner the President's authorization, appointed Ambrose H. Hill "to make these allotments and also the allotments on the original Klamath River Reservation" and approved the draft instructions submitted to him on September 23 (*supra*), upon which the Commissioner sent the instructions to Mr. Hill.

81. The letter of instructions to Special Agent Hill of September 23, 1892, first dealt with the allotment of the lands of what was the Klamath River Reservation. The 1892 act was described; the agent was to advise the Indians of their opportunity and have them sign an application. The letter recognized explicitly the applicability to allotments of

both the General Allotment Act and the act of 1892, both generally and in the following paragraph:

The allotments are to be made under the Act of February 8, 1887, "or any act amendatory thereto." Said Act has been amended by the Act of February 28, 1891. Under the former act as amended by the latter, each and every Indian located on the reservation, (Original Klamath River) is entitled to 80 acres of agricultural land, or a double quantity of grazing land. No Indian is entitled to an allotment unless he was located on said reservation on the 17th of June, 1892.

The letter of instructions then gave a series of detailed procedural rules for the making of allotments, and went on to the subject of allotments on the Connecting Strip.

82. In opening the discussion of the Connecting Strip the instructions mentioned the extension of limits of the Hoopa Valley Reservation by executive order of the prior year to include not only the "original Klamath River Reservation" but also the "connecting strip" of 2 miles centered on the river. Allotments to Indians on the Connecting Strip were, it was noted, not authorized by the Act of June 17, 1892, but were to be made by authority of the President under the General Allotment Act, the Act of February 8, 1887, as amended February 28, 1891:

By an Executive Order, dated October 16, 1891, the limits of the Hoopa Valley Reservation were extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the limits of the Hoopa Valley Reservation, as then existing, to the Pacific Ocean, "Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended"—This extension of the Hoopa Valley reservation included the original Klamath River reservation, the subject of the foregoing instructions and of the Act of June 17, 1892, and also a strip of country 1 mile in width on each side of the river, between the two reservations. This connecting strip is not included in the provisions of the Act, but the President has authorized allotments to be made to the Indians located thereon. As soon, therefore, as you complete the allotments on the original Klamath River Reservation you will proceed to make those on the connecting tract. Agent Beers reports that these Indians number some 475. Allot-

ments should be made under the foregoing instructions except that as they are not required to apply for allotments, you need not have them sign an application. You will observe that tracts to which valid rights have attached are excepted from the reservation and are therefore not subject to allotment. I enclose for your information list of entries within the strip.

The "foregoing instructions," mentioned in the third-from-last quoted sentence, were a reference to the detailed procedural instructions earlier given for the making of allotments on the former Klamath River Reservation.

83. Hill proceeded to the reservation and on February 13, 1893 he submitted a schedule, approved on August 11, 1893, of 161 allotments of "lands allotted to Indians located on the Original Klamath River Reservation." The allotments varied widely in size, from 8 to 160 acres, averaging approximately 60 acres each, to a total of 9,762 acres. Of the 161 allottees, two are known to have been Indians of Hoopa blood who had resided on the lands of the original Klamath River Reservation for many years prior to receiving their allotments.

84. In February, 1894, Charles W. Turpin succeeded Hill and undertook the completion of allotments on the Connecting Strip.

The instructions to Turpin, from Acting Commissioner Frank C. Armstrong, dated February 21, 1894, in relevant part read as follows:

Having been assigned to the duty of allotting lands to the Indians of the Hoopa Valley Reservation in California, the following instructions are given for your guidance.

By an Executive Order, dated October 16, 1891, the limits of the Hoopa Valley Reservation were extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the limits of the Hoopa Valley Reservation, as then existing, to the Pacific Ocean, "Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended." This extension of the Hoopa Valley Reservation included the original Klamath River Reservation, (which extended up the Klamath River one

mile in width on each side for a distance of twenty miles) and also a strip of country one mile in width on each side of the river between the Klamath River and the Hoopa Valley Reservations.

The allotments on the Klamath River Reservation have all been made and approved.

On the connecting strip Special Agent Hill has made 246 allotments and submitted duplicate schedules thereof to this office.

\* \* \* \* \*

Your first duty will be to complete the work of making allotments on this connecting strip, of which Special Agent Hill reports that some 12 miles, on which are located about 125 Indians, remains to be allotted.

Allotments on this strip were authorized by the President September 30, 1892. They are to be made under the Act of February 8, 1887, as amended by the act of February 28, 1891, by which every Indian located on the reservation is entitled to 80 acres of agricultural or a double quantity of grazing land. Special Agent Hill however found it impracticable in very many cases to give the Indians, or to induce them to take, anywhere near the quantity of land allowed by the act. You will endeavor to allot them the full quantity where practicable, and where not, give them as much as they desire within the limit—much of the land is understood to be of no value to them.

\* \* \* \* \*

3. Selection for orphans will be made by yourself and the Agent in charge of the Hoopa Valley Agency.

\* \* \* \* \*

5. The tracts given to each allottee should ordinarily be contiguous, but he may be allowed to select detached tracts if necessary, in order to give him a proper proportion of agricultural land, wood and water privileges. Forty acre tracts of agricultural land may be divided into fractional parts of 20, 10, 5, or  $2\frac{1}{2}$  acres if necessary to secure to each family a due proportion of agricultural land.

6. Each Indian should be allowed to select his land so as to retain any improvements made by him. . . .

7. A description of the tracts to which valid rights had attached at the date of the Executive Order of October 16, 1891, was forwarded to Special Agent Hill March 14, 1893.

\* \* \* \* \*

Further instructions will be given you in regard to the allotment on the original Hoopa Valley Reservation.

Upon receipt of these instructions you will proceed to the Hoopa Valley Agency and reservation for the purpose of making the allotments thereunder.

I enclose copy of the act of February 8, 1887, and also of act of February 28, 1891.

85. Hill completed the allotments on the Connecting Strip in the year of his appointment, 1894, with the submission of a schedule of 253 allotments.

The Hill schedule was approved on June 23, 1898, and the Turpin schedule (with two exceptions) on June 27, 1898. The total almost 500 allotments varied in size from 5 to 160 acres and averaged approximately 40 acres each.

Two of these allottees are known to have been of Hoopa blood. They had been residents of the Connecting Strip for some years.

86. Surveys for allotments on the Square, begun (finding 78(b), *supra*) when the reservation consisted only of the Square, were completed on February 21, 1894, and the Commissioner then recommended that the authority of the President, necessary under the General Allotment Act, be obtained for the making of allotments. Acting Secretary Hines on February 23, 1894, requested Presidential authorization "for the making of allotments on the Hoopa Valley Reservation" under the General Allotment Act, and the President having on March 9, 1894 signed an order reading "Relating to the allotment of lands on the Hoopa Valley Reservation, California," the authorization was on March 12, 1894 transmitted to the Commissioner, who transmitted instructions to Special Agent Turpin on December 18, 1894.

87. The instructions of December 18, 1894 to Special Agent Turpin, after reciting the President's authorization for allotment of lands, stated:

This reservation was established by the executive orders of November 16, 1855 and June 23, 1876 and embraces some 89,572 acres, the number of Indians located thereon being estimated at 475. The greater portion of the land is not susceptible of cultivation. In fact it is

doubtful if there is over 3500 acres of arable land in the reservation.

Reference was made to a body of arable land located remotely on the reservation, not yet surveyed; a road to this land was under construction. Turpin was to survey this land and to make allotment of the lands already surveyed.

The instructions recognized that lands in the valley proper would be insufficient for full-sized allotments to those who might be entitled, and it was suggested that 5 or 10 acres of the available valley land be allotted, each Indian being allowed to retain his improvements, and that the allotments be filled out with lands "in other parts of the reservation":

With regard to the lands in the Hoopa Valley you will consult freely and fully with Capt. Dougherty, and endeavor to satisfactorily adjust the holdings of the Indians to the surveyed lines. The lands in this valley should be divided as equitably as possible among the Indians located thereon, each Indian being allowed to retain his improvements. It is not expected that these lands can be allotted in full quantity, but those in possession may be given 5 or 10 acres, and more in cases where they have improved the same if it can be done without injustice to others. Capt. Dougherty is thoroughly familiar with the situation and will doubtless cheerfully aid you in this work. As far as practicable the allottees should be allowed to fill out their allotments by taking the balance in other parts of the reservation.

In other respects you will be governed by the instructions given you February 21, 1894, for your guidance in making allotments on the addition to the Hoopa Valley Reservation.

88. In 1896, Turpin proposed about 395 partial allotments on the Square of small tracts of about 5 acres of agricultural land, most of them in the valley proper. Grazing and timber lands were not allotted, and the Commissioner reported that further surveys would be necessary before the allotments could be completed.

Years passed, however, and the schedule of allotments was not approved because "many of the selections were described by metes and bounds and further surveys were necessary."

A new survey was made in 1915, and was approved in 1917.

89. On June 19, 1916, an ad hoc council of Indians, convened to pass on the applications of Indians from off the

reservation for enrollment on the reservation with a view to obtaining allotments, petitioned the Commissioner, urging that outsiders, and particularly Klamaths, not be recognized as having any rights to the lands of the reservation (by which they meant the Square), which they wanted kept for members of the Hoopa Tribe alone.

The directions of the Indian Office to convene the council are the subject of finding 102, *infra*, and the council's place in the history of tribal organization is the subject of finding 110, *infra*. The letter is set out here, for its relevance to the subject of allotments:

We, the members of the Hoopa Indian Council, representing the tribes of Klamath, Redwood, and the other tribes that come under the Hoopas, do hereby write a few lines in explanation of certain conditions existing on the Hoopa Reservation in regard to the allotments that are now pending. In the first place there are Indians living on the Reservation that we think have no tribal rights here, they having no Hoopa blood in their veins. And besides these there are a great many outside Indians that want to get land here. There are certain tribes that are regarded as having tribal rights on the Hoopa reservation. This we cannot understand. Take the Klamath for instance—they represent a different tribe, talk a different language, and have never associated with the Hoopas to amount to anything. As near as we can understand the Hoopa and Klamath River reservation were allotted twenty some odd years ago. The Klamath are to-day enjoying the rights of their allotments, own their land and homes. While the Hoopas have had their land resurveyed and now are waiting to receive their allotments and are still uncertain about our land, and still they say we are linked with the other tribes. Surely there must be a mistake somewhere. This we would like to have looked into and corrected. We as members of the Hoopa Indian Council, knowing the real conditions that exist on the Hoopa Reservation, do hereby say that taking all things into consideration—the amount of land—the number of real Hoopa Indians, that members of the Hoopa tribe as an average are having a hard time to make a living on the land they are now working. And to crowd us still closer would be reducing some to poverty. This we do not wish to see, as we are looking forward to the future. To you therefore, the Commissioner of Indian affairs, we ask to do all in your power to have the Hoopa Reservation set aside for the members of the Hoopa tribe, that

they may get enough land to make a living on. All we ask is to be given an equal chance.

90. On July 17, 1918, pursuant to the new survey (finding 88, *supra*) Superintendent Mortsoif was instructed to make allotments in the Hoopa valley proper and in the grassland area of the Square known as Bald Hills. There were about 1600 acres of arable land in the valley and 2000 acres of grazing land in Bald Hills. (The rest was largely timberland, the source of the present controversy.)

On March 2, 1922, and July 23, 1923, there were approved 365 allotments in the valley and at Bald Hills, listed on an original and three supplementary schedules, designated A, B and C, submitted by Superintendent Mortsoif. The allotments were small, averaging 8 acres.

A Mortsoif Schedule D of 38 allotments, submitted on December 10, 1921, and a Schedule E of three additional allotments, submitted on February 12, 1924, were not approved because they had not been surveyed.

There the matter rested for almost 10 years, until 1932.

91. On November 2, 1932, Commissioner Rhoads directed Special Allotting Agent Charles E. Roblin to proceed to the Hoopa Valley Agency to confer with Superintendent Boggess concerning the making of further allotments on the Square and a general study of the allotment situation there.

Agent Roblin made a first report by letter of November 19, 1932 in which he concurred in a recommendation of the Forest Service that land covered by forest or heavy brush or otherwise rendered unusable for agricultural or grazing purposes should be retained as tribal land. Such lands, he wrote, constituted a "very large percentage" of the reservation lands; there remained for allotment only a "very limited area" of agricultural land and other land which might profitably be used by individuals, the majority of the suitable lands having been disposed of by the 365 allotments made in 1922 and 1923. These former allotments he described as "apparently provided for the Indians of the Hoopa Valley Reservation, California, who were then entitled to lands in allotment by reason of use and occupancy, under instructions theretofore issued."

92. Roblin dwelt in detail on the large number of possible

claimants, estimating that 600 Indians of those on the Connecting Strip and the Square would probably seek allotments:

The Hoopa Agency census rolls for 1932 show the following numbers of persons:

Hoopa Valley (original Hoopa Valley Reservation)-----	561
Klamath River (original twenty mile strip from Pacific Ocean, along Klamath River)-----	608
Lower Klamath (Connecting strip along Klamath River, between original Klamath River Reservation and original Hoopa Valley Reservation)-----	373
 Total -----	 1,542

Of these persons it is probable that only those of the the original Hoopa Valley Reservation and of the connecting strip will desire allotments on the Hoopa Valley Reservation. These total 934. The available record does disclose how many of these are without allotments; but, as the original allotment rolls covered only 365 allottees, and as a certain proportion of these are now deceased and so not now on the census rolls, a conservative estimate would indicate that at least 600 of those now on the rolls are unallotted.

93. Assistant Commissioner Scattergood acknowledged Roblin's report on December 13, 1932. Noting that on some reservations the Indians, rather than receiving allotments, had received assignments by which the occupant was permitted to live upon and improve a tract as if it were his own so long as he made beneficial use of the land, Scattergood requested Roblin's views on the advisability of making assignments rather than allotments on the Square.

Roblin responded by letter of January 12, 1933, in which he recommended that the persons named on Mortsolf's Schedules D and E (finding 90, *supra*) should have those tracts allotted to them, and that claimants whose selections covered land which would not require supplemental surveys should have that land allotted to them, provided their "enrollment on the Hoopa Valley Agency rolls has been regular and they are entitled to allotment," but that the lands which would require supplemental surveys if allotted and certain other lands surveyed but selected by children born subsequent to a certain date should be as assigned rather than allotted. This letter was "read and approved" by Superintendent O. M. Boggess.

94. In his letter of December 13, 1932 Scattergood had also asked Roblin for details of the cases of 125 Indians whose claims to an allotment, Roblin had reported, were in doubt. Scattergood asked on what the claims were based and why their rights were considered doubtful.

Roblin replied, in his letter of January 12, 1933 (a letter which as noted was read and approved by Superintendent Boggess) as follows:

In my report of November 19, 1932, (L-A, 50666-32), I reported that selections had been filed by or on behalf of 125 persons whose right to allotment "is in doubt"; and the Office requests information as to the basis of these claims and "why the right to allotment is considered as in doubt". A check of the annual census reports for 1932 shows that all these claimants are carried on the rolls at Hoopa Valley Agency, either as "Hoopa" Indians, "Klamath River" Indians, or as "Lower Klamath" Indians. The Lower Klamath Indians are those living on or belonging with those who were allotted on the "Klamath River" reservation created November 16, 1855, extending for a width of one mile on each side of the Klamath River for a distance of twenty miles up from the mouth of that river. The unallotted portion of that reservation was returned to the public domain under authority of the Act of Congress approved June 17, 1892. The Hoopa Indians are those living on or belonging with the Indians of the "Hoopa Valley" reservation created August 21, 1864 and confirmed by Executive Order of June 23, 1876 in compliance with the Act of Congress approved April 8, 1864. The Klamath River Indians are those living on or belonging with the Indians of the Addition to the Hoopa Valley Reservation created by Executive Order of October 16, 1891, which addition is a strip extending for a width of one mile on each side of the Klamath River for a distance of approximately twenty-seven miles down that river from the northern boundary of the original Hoopa Valley reservation to join the original Klamath River reservation. This is generally known as the "connecting strip". See note, page 6.

Under date of July 8, 1930 (L-A, 32789-30), the Office advised the superintendent of the Hoopa Valley Agency that the Hoopa Valley Reservation "was created under the authority contained in the act of April 8, 1864 (13 Stats., 39-40), for the accommodation of the Indians of the State of California, and was intended to include both branches of the Klamath River tribe", and that the

so-called connecting strip "is considered merely to be an addition to the Hoopa Valley Reservation".

The doubt as to the allotment rights of the 125 claimants mentioned seems to be very indefinite, and based largely on a desire of the Hoopa Indians to exclude the Klamath River and Lower Klamath Indians from allotment on the original Hoopa Valley Reservation, and also on a desire of the Hoopa Valley Agency officials to limit as far as possible the number of additional allotments to be made. This list also includes most of those who have heretofore been allotted field or grazing allotments and are now asking for "house lots" or additional areas of one sort or another. Two of these have received patents in fee for their original allotments, have sold them, now find themselves without title to any land on the reservation in their own right, and are applying for house lots or other land for themselves. These should probably be denied.

The rights of some are questioned because they were not living on the reservation when allotments were made in 1917 and 1918, but have moved onto the reservation since to secure better school facilities or some other advantage.

However, all these applicants are on the Hoopa Valley Agency rolls and are carried on the annual census reports; and as the Hoopa Valley Reservation was created as one of several reservations to be set apart for the "Indians of California", it is my opinion that the objection to the rights of these claimants, *as a class*, should be disregarded. In some few cases the objections may be substantiated by an investigation which would result in striking the names from the official rolls; but these cases would be very few.

\* \* \* \* \*

[p. 6] Note. Page 1. The statement made by me on page 1 of this letter as to the status of "Klamath River" and "Lower Klamath" Indians, is not in accord with the statement in the fourth paragraph of page 1 of my letter of November 19, 1932, (L-A, 50866-32). I am advised that these two census rolls are inextricably mixed; that some years ago it frequently happened that Indians were changed from one roll to another by reason of inter-marriage between Indians of the different rolls, or by reason of change of residence from one part of the Klamath country to another part. Some of this confusion seems to arise because the Klamath Indians themselves have a custom of designating all Indians living below a certain point on the Klamath River as "lower Klamaths", and those living above that point as "upper Klamaths". This point seems to be above the village

of Weitchepec; and this would leave all of the original Klamath River Reservation and all of the connecting strip or Hoopa Valley Addition in the "Lower Klamath" country. However that may be, the Indians of the "Klamath River" and "Lower Klamath" census rolls are equally entitled to rights on the Hoopa Valley Reservation and on the addition thereto.

The officials of the Hoopa Valley Agency realize that these rolls are not accurate and that they cannot be accurately reconciled without a field census being taken. They desire that such a census be authorized.

95. Roblin's recommendations with respect to the D and E schedules and to assignment rather than allotment were approved by the Commissioner on February 20, 1933.

96. By letter of February 20, 1933, Commissioner Charles J. Rhoads advised Superintendent Boggess that approval of the Mortsolf D and E schedules would be given. No further allotments would, however, thereafter be made, he wrote, because Indians of the Connecting Strip and the Lower Klamath Strip (which he called the "former Klamath River Reservation") would all be equally entitled to allotment on the Square (which he termed the "original Hoopa Valley Reservation"), and the available agricultural and grassland would be sufficient for so small a number of those qualified as to work injustice. The land would rather be assigned to those who would engage in actual beneficial use.

The relevant portion of his letter reads as follows:

We have come to the conclusion that allotment schedules "D" and "E", referred to by Mr. Roblin in his letter of January 12, 1933, which were submitted several years ago but which were not then approved because of the need for additional surveys, should now be brought up to date and submitted for further consideration. \* \* \* We feel that these unallotted qualified Indians have the strongest claims to allotments of any of the Indians on the reservation.

We do not believe that further allotments should be made after the schedules referred to have been approved. Indians of the "Connecting Strip" and of the former Klamath River Reservation would be entitled to allotments equally with those living on the original Hoopa Valley Reservation, and it clearly appears from the reports that there would only be sufficient agricultural and grazing land on the reservation to allot a very small proportion of these Indians. Hence, it would be prac-

tically impossible to determine which Indians should be given and which denied allotments so as not to work an injustice upon certain individuals.

\* \* \* \* We believe it would be better to leave the lands in their present status, and assign the remaining un-allotted agricultural and grazing lands to individuals who actually wish to make beneficial use thereof.

For the reasons given after the schedules referred to above are approved, no further allotments at Hoopa Valley will be made at this time. [Emphasis added.]

Assignments were thereafter made, pursuant to Commissioner Rhoads' foregoing decision.

97. Most of the allotments on Mortsof's Schedules D and E were thereafter, in 1933, approved; a few were delayed, for reasons not material, until 1950.

98. The Indian Reorganization Act of June 18, 1934 (48 Stat. 984) provided, *inter alia*, if the Indians of a reservation so voted, for an end to any allotments of Indian land in severalty, for continuation of any restrictions on alienation on any Indian lands and for the restoration to tribal ownership of any remaining surplus lands of any Indian reservation.

Section 18 of the act provided in pertinent part as follows (48 Stat. 988):

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application \* \* \*

Two elections were held on the Hoopa Valley Reservation, one for the Klamaths and one for the Hoopas. In a letter of October 20, 1934 Commissioner Collier advised the District Coordinator for the Reorganization Act that Superintendent Boggess was authorized to hold separate elections for the Hoopas and for the Klamath Indians, as follows (65 Dec. Int. Dept. 59, 68)

Superintendent Boggess is authorized to hold two separate elections on the Hoopa Valley Reservation, one of them on Hoopa Valley proper for the Hoopa, and another election on the territory occupied by the Klamath Indians, when the Secretary calls such election.

In both elections, held December 15, 1934, the vote was overwhelmingly against the applicability of the act.

99. All told, assignments of land on the Square were made to nineteen Indians, known to be non-Hoopas, of the Lower Klamath or Yurok tribe and of the Upper Klamath or Karok tribe.

100. (a) All told, 35 Indians known to be non-Hoopas, of the Lower Klamath or Yurok tribes, the Upper Klamath or Karok tribe and the Redwood tribe, received allotments on the Square. Most of the allottees on the Square were, of course, Hoopas.

(b) Four Indians known to be of Hoopa blood received allotments on the Addition. Most of the allottees on the Addition were, of course, Yuroks.

(c) The non-Hoopas allotted on the Square were connected with the Square by residence there or by parentage, their parents having resided on the Square.

(d) The Hoopas allotted on the Addition were connected with the Addition by residence there.

#### *Administrative Rulings*

101. In connection with the allotment program, officials of the Indian Office on a number of occasions ruled that Indians of the Addition and the Square—Klamaths and Hoopas and others—were equally entitled to rights in the entire reservation as enlarged and, specifically, in the Square. These rulings are detailed in the following findings.

102. In 1915, while surveys for the final allotments on the Square were under way, there were several cases of Indians from outside the reservation who unsuccessfully sought to be enrolled with the Indians of the reservation with a view to becoming eligible for an allotment. One such applicant, James McDonald, was a half-Yurok who had lived on the Addition for some years.

C. F. Hauke, the Chief Clerk of the Indian Office, directed that McDonald show by affidavit the dates of his residence on the reservation, how "tribal relationship has been maintained," and that the matter then be presented to a council of Indians of the Hoopa Valley Reservation for an expression of views as to whether he and his children were considered to be "recognized members of the tribe."

On November 8, 1915, Superintendent Mortsolf at Hoopa valley advised that as instructed he had convened a council

of five Indians, who had rejected McDonald's application as well as those of three other Indians, for the same reasons, stated as to McDonald as follows:

\* \* \* James McDonald is not of Hoopa blood, and has no relatives [sic] either living or who have lived here; that he has never lived here, and that the quantity of land here is not any more than sufficient for the people who have always lived here.

On December 2, 1915, Hauke inquired of Mortsof whether the council "represented all the tribes having rights on the Hoopa Valley Reservation, or only the Hoopa Tribe," and on the following January 15 Hauke requested that new applications be submitted, giving details of birth and Indian blood and stating whether the applicant's parents were "enrolled and recognized members of one of the tribes having rights on the Hoopa Valley Reservation and received benefits therewith." Such new applications, he said, should be submitted to a council "representative of the tribes having rights on the Hoopa Valley Reservation" for an expression of their views as to whether the applicant or his parents have "at any time been considered as recognized members of one of these tribes."

Mortsof asked for guidance as to what tribes had rights on the reservation, as follows:

I am not, nor never have been sure just what tribes have rights on the Hoopa Valley Reservation, never having seen a copy of the Act of Congress approved April 8, 1864 which is referred to in the Presidential proclamation determining [sic] the reservation.

I will thank the Office to send me this information which now is necessary for me to have in order to determine whether any council would be representative of all tribes having rights here.

To this Hauke replied on February 19, 1916 that the tribes occupying and belonging to the Hoopa Valley Reservation were the "Hunsatung, Hupa, Klamath River, Miskut, Redwood, Saiaz, Sermalton, and Tishtanatan":

The Act of Congress approved April 8, 1864 (13 Stat. L., 39), mentioned in Executive Orders of November 26, 1902 [an error], June 23, 1876 and October 16, 1891, makes no reference to the tribes having rights on the Hoopa Valley Reservation.

The tribes living on the reservation that have participated in tribal benefits and been recognized as belonging on the said reservation may be considered for the purpose of passing on applications for enrollment as having rights therewith.

From the annual report it will be noted that the following tribes are listed as occupying and belonging to the Hoopa Valley Reservation: Hunsatung, Hupa, Klamath River, Miskut, Redwood, Saiaz, Sermalton, and Tiahtanatan.

(According to the Congressional Directory for 1916, Hauke was as Chief Clerk of the Indian Office the third ranking officer of the office. He followed in rank the Assistant Commissioner and preceded the chief inspector and the heads of the divisions.)

The defendant correctly characterizes Hauke's letter as evidence of Indian Office treatment of the Indians residing on the Square, the Connecting Strip and the Klamath River Reservation as having a common interest in those three tracts regardless of where they resided.

In pursuance of Hauke's instructions, Mortsoff added two members to the council, explaining to Washington that to the extent possible they represented the tribes listed by Hauke. He wrote that the Hunsatung, Saiaz and Tiahtanatan were so scattered or intermarried with the Hoopa as to be extinct or unidentifiable, although councilman William Quimby was "a partial representative" of the Tiahtanatan; that Hoopa "is the general name for practically all the minor tribes, which were represented at the time of the establishment of the reservation;" that the Redwood were once numerous but few were left, and that he had added William Stevens, "a full-blooded Redwood Indian," to the council to represent the Redwoods.

Of the Klamaths, Mortsoff said that they were "numerous;" that while "few of them live in Hoopa Valley proper, there are many of them adjacent, who are landless and who wish to acquire reservation rights. David Maston, has been added to the Council, to represent this tribe."

McDonald's new application was submitted to the council as reconstituted and was rejected because, the minutes recited, McDonald "does not belong to any of the tribes entitled to enrollment on the Hoopa Reservation."

Mortsolf then forwarded McDonald's application and the minutes of the meeting at which it was rejected, with a letter, dated June 19, 1916, urging that the council's action be approved. He said:

The case of James McDonald is typical of practically all of the applications for enrollment from outside the reservation, and should the Office approve of the action and wishes of the Council and reject said application, there will be no need to take up the other cases mentioned in previous correspondence, unless any applications are found to differ in some of the essential points. It will be noted that the Hoopa Council unanimously voted recommending that the application of James McDonald be rejected. This council is composed of Indians living on the Hoopa Valley Reservation proper and represents all of the tribes not now extinct enumerated in the act of Congress and presidential proclamation setting aside this as an Indian Reservation.

I hope that the Office may see fit to approve the recommendation and reject the application of James McDonald, insofar as his enrollment might entitle him to land within the Hoopa Valley Reservation. There are so many of these outside Indians who will apply for land and so little agricultural land available that it would defeat the purpose of allotment if the number of Indians were materially increased.

(Mortsolf is patently in error in referring, at the end of the first-quoted paragraph, to "all the tribes not now extinct enumerated in the act of Congress and presidential proclamation setting aside this as an Indian Reservation." There were no tribes enumerated in the act of 1864 (finding 10, *supra*) or in either of the two executive orders dealing with the Hoopa Valley Reservation (findings 29, 33, *supra*).)

On July 17, 1916, Hauke approved the rejection of McDonald's application, on the ground that McDonald was "never enrolled and recognized as a member of any of the tribes receiving benefits on the Hoopa Valley Reservation, nor did he ever maintain tribal relations therewith" and that the "representative tribal committee" had refused to adopt him.

Mortsolf had, with his letter of June 19, enclosed a letter from the council of the same date, on the general subject of the rights of Klamaths to allotments; the letter is set out in finding 89, *supra*. Hauke's letter of July 17 was addressed to Mortsolf and was a response to Mortsolf's letter of June 19.

and not to the council's letter of the same date. Hauke does not mention the council's letter, and no response to the council's letter appears in the record.

103. The next ruling was made in connection with a protest of the allotments of Hoopa Valley land to a family named Horn, Karok or Upper Klamath Indians on the Turpin schedule, who were born on the Upper Klamath and came to Hoopa Valley in 1893. Superintendent Mortsoff reported as follows, on October 14, 1918:

On the Klamath River there are two distinct languages spoken, namely, the Lower Klamath and the Upper Klamath. From the mouth up to and including Weitchpec, the Indians speak the Lower Klamath tongue and from above Weitchpec up as far as [sic] Happy Camp, the Upper Klamath River language is spoken. These languages are separate and distinct and I assume that there are two separate and distinct Indian tribes.

At the time the selections were being made in that portion of the Reservation where the Horn allotments are located, a protest was made by James Jackson, Anderson Mesket and several others to the effect that the Horn family were not Indians who were entitled to lands in this Reservation.

It is my understanding that the Hoopa Valley Reservation was established by an act of Congress, April 8, 1864 (13 Stat. 39) for the use and occupancy of several tribes of Indians among whom were mentioned the Klamath River tribes. It has never occurred to me that any distinction might be made between those Indians of Klamath River who live on the Upper and Lower part. I have, however, taken testimony of several witness [sic] publicly bearing upon these allotments and am submitting the same herewith. It is my opinion that there is no good reason why the Horn family should not be allotted at this time. Under date of July 1 [sic], 1918, I was instructed by the Commission [sic] of Indian Affairs that those persons on the original allotment schedule should be given the privilege of making the first selections.

Chief Clerk Hauke, in a letter of April 22, 1919 (which both parties treat as the answering letter or an answer to a similar letter), agreed that the reservation was intended for the accommodation of the Indians of California, including both branches of the Klamath River tribe:

Receipt is acknowledged of your letters of . . . March 8, 1919, with respect to the rights of certain Indians be-

longing to the Upper Klamath Tribe or Band, to receive allotments with the Indians of the reservation under your charge.

In answer, you are advised that the Office concurs in your view, that the Hoopa Valley Reservation which was established by the Act of April 8, 1864 (13 Stat. L., 39-40), for the accommodation of the Indians of the State of California, was intended to include both branches of the Klamath River Tribe. Further no restrictions whatever are made in the Executive Orders relating to the reservation, nor is it believed that the protests of the few Indians thereof to members of the Upper Klamath Band, should be allowed to interfere with these Indians, who, in the main were placed on the allotment schedule made in 1895 by Special Allotting Agent Charles Turpin, as entitled to benefits of the Hoopa Valley Reserve.

Allotments of Square land to members of the Horn family were ultimately approved, and were among the allotments to non-Hoopas (finding 100, *supra*).

104. In 1927, again, Karoks, as Indians living in the immediate vicinity of the reservation, were held eligible to enrollment and to allotment, conditioned, however, upon their removal to the reservation, which was found not to have occurred in the case at hand. The Assistant Commissioner held that the reservation had been created in 1864 for all the Indians of California and that the extension of the reservation in 1891 to include the Lower Klamath Strip and the Connecting Strip was for the benefit of the Indians living along the Klamath.

The case was first presented on December 22, 1926, when Superintendent John D. Keeley wrote to the Commissioner concerning the applications of two Karok Indians, cousins, Rosa Sunderland and Linda Ince, for enrollment on the Hoopa Valley Reservation. Expressing some doubts as to whether the Karoks were a separate tribe or in reality the same as the "Klamath River Indians," he said that "[i]f these people have any right to enrollment it would be through the Klamath River Indians." He inquired "whether there is a distinction between the Klamath River Indians and the Hoopa Indians relative to tribal rights. Do the Klamath River Indians have any claim on the tribal lands of the twelve-mile square portion of the Hoopa Reservation?"

Mrs. Sunderland and Mrs. Ince had been born and raised at Happy Camp on the upper Klamath, above its junction with the Trinity, and thus off the reservation, and had apparently never lived on the reservation.

Assistant Commissioner E. M. Meritt responded on January 20, 1927, that the four reservations created under the 1864 act, of which the Hoopa Valley Reservation was one, were intended "to accommodate all the Indians of California" and that since the setting aside of the Hoopa Valley Reservation did not specify the tribes to occupy it and since the addition of the two Strips was for the benefit of the Indians along the Klamath, the Klamath Indians living in the immediate vicinity of the reservation had as much right as any other Indians, conditioned, however, upon their removal to the reservation:

In your letter you ask to be advised as to whether or not the Klamath River Indians have any claim on the tribal lands of the twelve-mile square portion of the Hoopa Indian Reservation. The twelve-mile square portion of this reservation was set aside by order of the Superintendent of Indian Affairs for California under authority of the Act of Congress of April 8, 1864 (13 Stat. L., 39), which authorized the setting aside of certain reservations for California Indians. These reservations were to be large enough to accommodate all the Indians of California. Neither the withdrawal nor the Act of Congress specified any particular Indians who were to occupy these reservations, and it is assumed that such Indians as are located in the immediate vicinity of the reservations are entitled to benefits thereon should they so desire. The one-mile strip on each side of the Klamath River was later added to the reservation for the benefit of the Indians living along the river. It is believed, therefore, that the Klamath River Indians have as much right on the reservation as any other Indians formerly residing in that part of the State of California, but it is believed that a removal to the reservation is necessary in order for them to obtain reservation land.

A second letter of May 11, 1927 from the Superintendent gave more information as to the distinction between Upper and Lower Klamaths—Karoks and Yuroks—and advised that the upriver Karoks had never moved to or become residents of the reservation, as distinguished from the Yuroks,

or downriver Klamaths, who lived on the Addition, from Weitchpec, at the junction of the Trinity and the Klamath, to the ocean. Accordingly, he wrote, only the Klamath Indians who lived from Weitchpec to the mouth of the Klamath River—that is, on the Connecting Strip and the Lower Klamath Strip—were entitled to reservation rights and were entitled to enrollment.

There being Indians from the mouth of the Klamath River practically to its head waters. Those from the mouth to Weitchpec are on our rolls, and are for the most part allotted; those from Weitchpec to Orleans, Happy Camp and up the river are not on the rolls of any agency so far as I know. \* \* \*

It has been customary to assume or to say that all Indians of Del Norte and Humboldt Counties are under the jurisdiction of this Agency, however, the Indians from Weitchpec, up the river, are really public domain Indians and have never lived on any reservation. In view of the statement of your office in your letter of March 5, 1927, LA 586222 [not in present record] defining the Hoopa Valley jurisdiction, it would appear that the only Klamath Indians under this jurisdiction would be the lower Klamath Indians which I take to be those from Weitchpec to the mouth of the river.

Mrs. Sunderland and Mrs. Ince, as Upper Klamath Indians, were therefore, he continued, on the authority of the Commissioner's letter of January 20, 1927 (*supra*) not entitled to enrollment, because not resident upon the reservation, and could become so entitled only if they lived in the immediate vicinity of the reservation and moved to the reservation:

\* \* \* [Y]our office ruled that Dan Effman and family, formerly a Karok Indian of the Happy Camp band, was entitled to enrollment here, he having resided here on the Reservation for a number of years. In view of the statements in your letters above \* \* \* referred to, it would appear that the upper Klamath River Indians, among which is the Karok band, are not within the jurisdiction of this Agency, and that the only way they could place themselves within the jurisdiction of this Agency would be to move to the Reservation and establish a residence thereon provided they were, prior to their removal to the Reservation, living

in the immediate vicinity of this Reservation. It would appear from this that Mrs. Sunderland and Mrs. Ince would not be entitled to enrollment or allotment on this Reservation as they do not comply with any of the requirements cited above.

Accordingly, Mrs. Sunderland and Mrs. Ince were denied enrollment on the ground that neither they nor the tribe of which they were members, the Karoks, had moved to the reservation.

105. Lawrence McCarty, a Yurok born on the Square who lived there until he was 15, in 1920, and then worked off the reservation, living there part-time, applied for enrollment in 1931, with a view to selection of land on the Square which he hoped to have allotted to him.

Superintendent Boggess forwarded his application to Washington on February 12, 1931, saying:

Mr. McCarty desires to select land within the twelve mile square of the Hoopa reservation and inasmuch as in a previous letter the Office informed me that Klamath Indians might select land therein there appears to be no objection to the arrangement.

I, therefore, recommend approval of his request as submitted.

Commissioner Rhoads approved the application on March 9, 1931, as follows:

As he was born on the reservation of Indian parents, at least, one of whom was allotted, he is entitled to enrollment under the Oakes case (172 Fed. Rep., 305), and you are authorized to enroll him under Section 324 of the Indian Office Regulations of 1904.

106. On July 8, 1930 Commissioner Rhoads in a letter to Superintendent Boggess advised that there being no restrictions in the executive order which in 1891 added areas to the reservation, an Indian of the Connecting Strip could exchange his allotment for one on the square. The opinion was expressed in broad terms, generally permitting exchange of an allotment for another on the original reservation or within the areas added:

The receipt is acknowledged of your letter of June 14, 1930 regarding allotment rights on the Hoopa Valley Reservation and the additions thereto.

The Hoopa Valley Reservation was created under authority contained in the Act of April 8, 1864 (13 Stat.

39-40), for the accommodation of the Indians of the State of California, and was intended to include both branches of the Klamath River Tribe. The so-called connecting strip which was added to the reservation by Executive Order of October 16, 1891 is considered merely to be an addition to the Original Hoopa Valley Reservation. No restrictions whatever are made in the Executive Order relating to the reservation and no reason is seen why any Indian who holds his allotment in trust should not be permitted to change his land for vacant lieu land on the original reservation or within the areas added thereto.

107. Special Allotting Agent Roblin expressed the opinion in his letter of January 12, 1933, that Indians of all the three parts of the reservation were equally entitled to lands on the Square (finding 94, *supra*). He said that the Indians of the "Klamath River" and "Lower Klamath" census rolls, by which he meant the Lower Klamath Strip and the Connecting Strip "are equally entitled to rights on the Hoopa Valley Reservation and on the addition thereto." He had tacitly assumed this, in his earlier report of November 19, 1932, that the Indians of the Lower Klamath Strip would probably not desire allotments from the lands remaining unallotted on the Square, and that 600 of the 934 Indians on the Connecting Strip and the Square would desire such allotments.

108. Commissioner Rhoads on February 20, 1933 halted allotments, and directed that the remaining land on the Square be assigned, on the ground that Indians of the Addition and of the Square were equally entitled to allotments, and that there was insufficient land for allotment to all who would be entitled. The central portion of his ruling, more fully quoted in finding 96, *supra*, reads as follows:

Indians of the "Connecting Strip" and of the former Klamath River Reservation would be entitled to allotments equally with those living on the original Hoopa Valley Reservation, and it clearly appears from the reports that there would only be sufficient agricultural and grazing land on the reservation to allot a very small proportion of these Indians.

*The Hoopa Business Council of 1933*

109. Historically, the Indian tribes who occupied or settled upon the Hoopa Valley Reservation were not politically

organized, had no tribal government, at least in peacetime, and after the Hoopa Valley Reservation was established did not participate in its administration. This state of affairs continued until 1915.

110. (a) In 1915-16, in connection with applications for enrollment with a view to allotment, Superintendent Mort-solf convened a council which the Indian Office directed be representative of all the tribes having rights on the reservation (finding 102, *supra*).

(b) All the members of the council, including the Yurok added to the council to represent that tribe, resided on the Square. A petition by the council to the Commissioner, set out in finding 89, *supra*, showed that despite the directions from the Indian Office the council in fact spoke on behalf of Hoopa or Square Indians and in opposition to Yurok or Addition Indians. See also finding 102, last paragraph, *supra*.

(c) There is no evidence of any activity of this council beyond this brief period.

111. On May 5, 1930, Superintendent John D. Keeley reported to the Commissioner of Indian Affairs that the Hoopa Valley Reservation did not have a tribal council. (The report was made in connection with an application for enrollment, which Keeley thought should be denied, since the man involved had lived off the reservation all his life and did not plan to make his home on the reservation.) Of a council Keeley said that there was none and he was glad of it:

As to putting the case up to the tribal council, this reservation does not have one, for which I am thankful, as tribal councils are the biggest source of agitation of anything in the Indian service. They are usually made up of the hand-picked agitators, and for the most part, the ones who can not, or will not, work or do anything for themselves.

112. Almost at the same time as this letter by Superintendent Keeley was written, Washington was writing to him, suggesting that a pending problem (the refusal of an Indian to do certain irrigation work) be presented to the tribal council. This letter was answered by Keeley's successor, O. M. Boggess, on July 24, 1930. Boggess replied that the problem had meantime been solved and, further "we have

no tribal council and I doubt the advisability of organizing one."

113. On January 10, 1933, Superintendent Boggess wrote to Commissioner Rhoads that since the time of the visit of a Senate investigating committee to the reservation, "our Indians at Hoopa" had become interested in organizing "a Business Committee or as they call it Tribal Council" which would have between 6 and 12 members "to represent the Hoopas in official matters." Boggess added he had no objection to this, because some of the "best Indians of the Valley" had been selected for the "Committee." He further explained that the Committee preferred to represent the Hoopas only, allowing the Klamaths down the river, "who but seldom come to Hoopa," to form their own council:

Because of the fact that the Indians down the Klamath river but seldom come to Hoopa, and their interests in many cases are different it is understood that they prefer a legally organized body of the Hoopas only; permitting the Klamaths to form a similar organization for their people if they should care to do so.

114. By letter of February 3, 1933, Commissioner Rhoads replied that the Indian Office had no objection to the formation of such a tribal council as the Superintendent had proposed. He cautioned, however, that its activities would be advisory only and that in most cases final action would remain in the Department of the Interior. The letter authorized Boggess to call a council of Indians of his jurisdiction to adopt a constitution providing for election of the business committee.

115. In the meantime, on January 23, 1933, Boggess wrote again to the Commissioner advising that some of the Indians living along the Klamath River had also formed a business committee to represent the Indians residing along the river. Boggess recommended that since the terrain made it difficult for the Indians along the entire river to meet to elect representatives, this informally created committee should be recognized in "ordinary matters." He said:

Owing to the exceedingly rough nature of this section and the lack of roads it would be exceedingly difficult to require the Indian people along the entire river to meet together for a regular election of councilmen, and as the number of matters requiring their attention is but

limited I do not think that they would be justified in going to this expense.

I suggest, therefore, that the Office write this body that it is possible that their organization has not been effected in exact accordance with its rules in regard to the election of a business committee but that it will be glad to recognize them in all ordinary matters which they wish to present in behalf of the Indians residing along the Klamath.

116. Commissioner Rhoads responded on April 20, 1933 that it had been understood that the council proposed in the Superintendent's first letter of January 10 (and already authorized (findings 113, 114, *supra*)) was intended to represent "the various tribes of Indians within the Hoopa Valley jurisdiction" so that it could handle matters affecting all of the "Hoopa Valley Indians." The Indians along the Klamath, the Commissioner continued, could have a separate committee for "local matters not involving the whole Hoopa Valley jurisdiction," but, he wrote, matters involving "the whole tribe" should be handled by "the tribal business committee for the whole tribe." He said:

It was our understanding that the organization proposed in said letter of January 10 was intended to represent the various tribes of Indians within the Hoopa Valley jurisdiction. In this way the business matters affecting all of the Hoopa Valley Indians could, no doubt, be more economically and expeditiously handled.

If the Indians residing along the Klamath River desire to have a separate business committee of their own for local matters not involving the whole Hoopa Valley jurisdiction, this Office has no objection. However, in matters involving the whole tribe, it is believed that they should act through their representatives on the tribal business committee for the whole tribe. We do not see the necessity, however, for selecting more than one representative from each of the eight districts for this organization.

117. When organized, the business committee of the Indians along the Klamath River was advised by Superintendent Boggess that the committee "would have to be through the Hoopa Council and it would only be a sub-council." The Klamaths were "disappointed that they couldn't have their own full council," and the council "died out." (The quota-

tions are from testimony of witnesses who recalled that attendance continued for only about a year.)

118. Sometime between February and May, 1933, Superintendent Boggess posted a notice calling for an election of the authorized council, but the response, he felt, was small and not representative, and no election was held at the appointed time. Thereafter, another plan was devised under which one representative was elected from each of a number of districts within the Square.

119. On June 3, 1933, seven Indians who had been elected councilmen from districts all of which were in the Square (and who were all residents of the Square) signed a petition to the then newly-appointed Commissioner of Indian Affairs, John Collier, in which they described themselves as "Councilmen of the Hoopa Tribe" and asked approval and recognition of their body as the representative of the "Hoopa Indians" to consider problems "within our boundaries," the boundaries not being specified. The petition said:

We the undersigned duly elected Councilmen of the Hoopa tribe from the Hoopa Indian Reservation do hereby sincerely petition the Department of the Interior and John Collier, Commissioner of Indian Affairs, to be recognized as the authorized representatives of the Hoopa Indians to transact their business, negotiations and recommendations, to be consulted about expenditures [sic] and disbursements pertaining to the welfare of our tribe and absolute control of our tribal funds or any disposition of said funds.

We sincerely wish to submit for your approval the organization of this tribe into seven Districts. Each of which have [sic] selected and elected by a majority of votes one Councilman for each district to meet one day each month to consider any problems which may arise within our boundaries.

\* \* \* \* \*

120. On receipt in Washington of the petition, it was passed to the new Commissioner by J. R. Venning of the "Miscellaneous Section" of the Indian Office with a memorandum dated June 14, 1933, which, referring to the Department's letters of February 3 and April 20 (findings 114, 116, *supra*), said that no official report of the organization authorized had been received and that it was "quite probable" that the petition referred to the organization which had been authorized,

and, further, that while it looked like a good plan it would be well to have the constitution and the official report of proceedings before giving recognition.

121. Commissioner Collier thereupon on the following day wrote to Gilbert R. Marshall, secretary-councilman of the council, acknowledging receipt of the petition and requesting that Marshall confer with Boggess and ask him to write to Collier "as to the status of any tribal organization which may now exist at Hoopa."

122. Boggess was just about then, on June 19, writing to the Commissioner. Referring to the Office's letter of February 3 "authorizing the Indians of this jurisdiction to organize a tribal business committee" (finding 114, *supra*), he asked for recognition of a tribal business committee which had been elected in "each district of the reservation." The names of the districts were given. To one closely familiar with the neighborhoods in the Square, the names of the districts, all place names in the Square, six of the seven being places in the valley itself, would have disclosed that the electorate of the council was limited to the Square. The letter did not otherwise indicate the scope of the area—Square or entire reservation—or of the Indians to be represented by the committee.

123. On July 10, 1933, Boggess sent the Commissioner a copy of the constitution of "our Business Committee," with his recommendation that it be approved.

Before the constitution was received, Assistant Commissioner William Zimmerman, Jr., on July 21, 1933, responded to Boggess' letter of June 19, sending him a copy of the council's petition of June 3 (finding 119, *supra*), stating that Boggess' letter of June 19 gave insufficient information and asking for a report as to the organization and the matters taken up. This letter does not indicate that the constitution, mailed by Boggess on July 10, had been received.

124. The "Constitution and By-Laws of the Hoopa Business Council," (a single document), was sent by Boggess to the Commissioner on July 10. It provided as follows:

Article 1. This organization shall be known as the Hoopa Business Council.

Article 2. The members of the Business Council shall be elected to act for the tribe \* \* \*.

The views of the tribe having been determined, the business council shall be cloaked with authority to act in any and all tribal matters, including tribal claims of every nature.

Article 3. The business council shall be composed of seven enrolled members of the Hoopa tribe; bona fide [sic] residents of Humboldt County, California, and twenty-one years of age or over.

Article 18. This constitution shall be in full force and effect to govern the Hoopa tribe and business council on and after the date it is approved by the Commissioner of Indian Affairs at Washington, D.C.

Aside from the quoted references to "the Hoopa tribe," the constitution did not indicate the geographical scope of the jurisdiction of the council—whether Square or entire reservation, the districts from which the councilmen would be elected, the eligible class of electors, or give any other data which would disclose whether the council was to be representative of or empowered to act concerning the Square alone or the entire reservation.

125. On November 20, 1933 Commissioner Collier approved the constitution, in a letter addressed to the secretary of the Hoopa Business Council. The full text of the letter read as follows:

This will advise that careful consideration has been given to the constitution and by-laws of the Hoopa Business Council submitted some time ago by the superintendent of the Hoopa Valley Indian Agency, and they are hereby approved.

This organization is recognized by this Service as being the official representative body of the Hoopa Valley tribe.

A note at the foot of the letter reads "Carbon to Hoopa Valley."

#### *The Hoopa Business Council—Composition and Operations*

126. In July 1934, Superintendent Boggess responded to an Indian Office circular questionnaire on tribal governments on reservations. In answer to the question "Does your council or committee or other organization represent the entire reserva-

tion or jurisdiction or are there separate organizations for each tribe" he said that the council represented the Square only:

Represents only the 12 mile square Hoopa proper [sic]. Klamath River, Extension a mile on each side of river from Hoopa reservation to Ocean, not represented on this council.

He confirmed this answer in responding as follows to a question as to the weaknesses of the present tribal government:

Inability to have proper representation from Klamath River portion. Difficulty of travel makes it impracticable for them to attend. Being a separate tribe they are not welcomed by Hoopas on strictly Hoopa matters.

127. The members of the Hoopa Business Council organized pursuant to the constitution and bylaws of 1933 were elected from six districts in the Hoopa Valley proper and one district on Bald Hills near the Valley, all in the Square, by the Indians residing in those districts.

128. Though the constitution of the Hoopa Business Council provided that council members be enrolled members of the Hoopa tribe (finding 124, *supra*) Indians of Yurok and Karok blood were members for periods of many years. They were David Risling and Jerry Horne, residents and allottees of land on the Square; George Nelson and David Masten (the latter is the same "David Maston" as had represented the Klamaths on the 1916 council (finding 102, *supra*)), both of whom held allotments on the Connecting Strip and were long-time residents on the Square; and Elizabeth Quimby, a long-time resident of the Square.

129. A number of Indians of mixed Yurok and Hoopa blood were members of the council. They were Edward Marshall, chairman in 1933-35; Gilbert Marshall, a member during ten years, 1933-35 and 1945-50, and chairman in 1935-37; Julius Marshall, a member for five years, 1935-39; Mahlon Marshall, chairman during five years, 1939-43; James Marshall, a member in 1943-45; Ernest Marshall, a member in 1948-50; Delmar Colegrove, a member in 1938-39; Gene Colegrove, a member in 1939-40; Byron Nelson, a member in 1948-49 and 1959; and Peter Masten, a member in 1936 and chairman in 1948-50. The Marshalls were half-

Hoopa, half-Yurok; the others had varying fractions of Yurok and Hoopa blood.

130. The Hoopa Business Council dealt not only with matters affecting the Square but also received delegations of Indians of the Addition and dealt with matters on or arising from the Addition. These matters, arising over the nineteen-thirties and nineteen-forties, included land disputes, expenditures and recommendations for improvement of roads, irrigation facilities and domestic water arrangements, a mineral lease, licenses for Indian traders and mapping along the Klamath River.

131. The council's Indian Court, to which it appointed as the reservation's Indian Judge David Masten, a prominent Yurok Indian (see finding 128, *supra*), passed upon disputes arising on the Addition as well as those arising on the Square, thereby exercising the same all-reservation jurisdiction as did the council itself.

#### *Yurok and Addition Organisations*

132. The Yurok Tribal Organization, a California corporation, was formed in 1949 to represent and promote the interests of all persons of Yurok ancestry, a group described as native to and resident of the Klamath River Basin, an area larger than the Addition.

133. A Yurok Indian Club is mentioned in the record in two widely-separated years. Nothing is known of its nature or membership.

134. On September 3, 1955 a constitution was adopted by a group of Indians, presumably Yuroks of the Connecting Strip, establishing an organization called the "Yurok Extension Business Organization," whose members would be Yuroks and which would exercise jurisdiction over the unallotted trust-status lands of the Connecting Strip. The Commissioner refused to approve the organization on the grounds, among others, that the organization would be confused with the "Yurok Tribal Organization" (finding 132, *supra*) and that the membership was limited to Yuroks while not all the residents of the area intended to be represented were Yuroks.

135. In 1961, long after the issue in the instant case had arisen, the Government encouraged the formation of a

"Hoopa Extension Reservation Organization," to exercise jurisdiction over the unallotted trust-status lands on the Connecting Strip. The members of the organization would be allottees on the Connecting Strip, lineal descendants of such allottees, of a specified percentage of Indian blood, and persons who "should have been" allotted. Despite the support of the Indian Office for the adoption of a constitution (which would have accepted the premise of the Government in the instant case of a separation of the rights of the Addition and Square Indians) the constitution was voted down, 110 to 31, the majority being of the opinion that they had a right to be members of an all-reservation group and intended to use legal means to enforce their rights.

*1950—The Hoopa Valley Tribe, its Hoopa Valley Business Council and the Official Roll of the Members of the Tribe*

136. In 1948, the Hoopa Business Council began formulating a program for the compilation of a current roll of the Indians of the Hoopa Valley Reservation as it originally was created, that is, the Square, for the purpose of controlling the revenues from the resources of the reservation as so defined. The discussions at council meetings of the compilation of the proposed roll, as reported in the minutes of the meetings, reflect a sentiment to exclude from the roll Indians of the Addition.

137. The council approved a form of application for enrollment on the proposed roll, prepared by the chairman and secretary of the council. The form was distributed only in the districts of the council, located in the Square. It was not distributed on the Lower Klamath Strip and the Connecting Strip because it was intended to exclude from enrollment the Indians residing there, unless they could qualify as a descendant of an allottee on the Square.

138. The application form was entitled "Application for Enrollment—Hoopa Valley Reservation—as of November 1, 1948." Inquiry was made on the form only as to the degree of "Hoopa Indian Blood." The application form inquired as to the applicant's justification for applying for enrollment, but did not state the basis upon which the applicant's eligibility for enrollment would be determined.

139. From the Indians who submitted application forms, the Hoopa Business Council prepared a list, entitled Schedule A, of those who had been allotted land on the Square or who were descendants of such allottees, and a list, Schedule B, of eighteen Indians who were not allottees or descendants of allottees on the Square, but were either "true" Hoopa Indians or Indians whom the council felt were entitled to membership in the tribe because their failure to obtain allotments was through no fault of their own.

140. At its meeting on April 6, 1950, the council set an election for May 13, 1950, for the purpose of adopting the schedules which it had prepared as the roll of Indians who would be entitled to share in the revenues from the resources of the original reservation, that is, the Square.

141. A notice was posted, addressed to "The Electors Of The Hoopa Valley Indian Tribe," that the election on May 13, 1950, would have the following purposes: 1) "To determine the minimum degree of Indian blood which a member of the Hoopa Tribe must have to be eligible for Tribal enrollment in the future;" 2) "To adopt a new Constitution and Bylaws for the Tribe;" 3) "To adopt officially into the Hoopa Tribe that certain list, designated as Schedule A, of Hoopa allottees and their descendants, to enable them to share in Hoopa Tribal benefits and moneys;" and 4) "To adopt officially into the Hoopa Tribe that certain list, to be designated as Schedule B, of Indians and their descendants who were not given allotments to enable them to share in Hoopa Tribal benefits and moneys."

The council had stated that persons at least twenty-one years of age, who had made application for enrollment, could be eligible to vote. The notice stated that the electors entitled to vote at the election must be not less than twenty-one years of age and must be on that list of Indians who made application for enrollment into the "Hoopa Tribe" prior to October 1, 1949, and that the list could be seen at the office of the Hoopa Indian Sub-Agency.

142. The "Hoopa allottees and their descendants" referred to in the foregoing notice to electors were the living allottees on the Square and their living descendants who had made application for enrollment and had been placed on Schedule A by the Hoopa Business Council. The Indians on Schedule

B were the eighteen Indians placed on the schedule by the Hoopa Business Council and were stated to be "either true Hoopa Indians" or to be entitled to membership in the tribe "since their failure to obtain allotments was through no fault of their own." The Indians on the list of Indians who made application for enrollment into the Hoopa Tribe prior to October 1, 1949, who the notice stated to be the electors entitled to vote, were not all of the Indians who had made application for enrollment. Rather, the Indians on this list, which the notice stated could be seen at the office of the Hoopa Indian Sub-Agency, were those Indians who had applied for enrollment and who the Hoopa Business Council had found to be allottees or descendants of allottees on the Square. Thus, the Indians on the list of electors and the Indians on the Schedule A to be voted upon were the same.

143. The electors were not representative of the Indians of the entire Hoopa Valley Reservation in that they did not include (a) Yurok or other non-“true”-Hoopa non-allotted Indians of the reservation, primarily Indians of the Addition, who were not descendants of allottees on the Square, and their descendants; and (b) Indians who had been allotted on the Addition, and their descendants.

144. At the election, held on May 13, 1950, 106 persons voting, the proposed constitution and bylaws was adopted by a vote of 63 to 33.

145. The constitution and bylaws adopted on May 13, 1950 established an organization denominated the "Hoopa Valley Tribe." The membership of this organization is described in Article IV of the constitution as follows:

Section 1. The membership of the Hoopa Valley Tribe shall consist as follows:

(a) All persons of the Hoopa Indian blood whose names appear on the official roll of the Hoopa Valley Tribe as of October 1, 1949, provided that corrections may be made in the said roll by the Business Council within five years from the adoption and approval of this Constitution, subject to the approval of the Secretary of the Interior or his authorized representative.

(b) All children born to members of the Hoopa Valley Tribe who are at least one-quarter degree Indian blood.

Section 2. The Business Council shall have the power

to make rules governing the adoption of new members or the termination of membership in the tribe.

146. The constitution and bylaws of May 13, 1950 created an executive body called the Hoopa Valley Business Council and conferred upon the council authority to direct the distribution of the resources of the Square, in addition to the authority (preceding finding) to make the rules governing membership in the "Hoopa Valley Tribe." The assumption of power over the Square was accomplished by Article III, *Territory*, which provided that the jurisdiction of the Hoopa Valley Tribe should extend to the Hoopa Valley Reservation as established by executive order in 1876, that is, the Square:

The jurisdiction of the Hoopa Valley Tribe shall extend to all lands within the confines of the Hoopa Valley Reservation boundaries as established by Executive Order of June 23, 1876, and to such other lands as may hereafter be acquired by or for the Hoopa Valley Indians of California.

147. Schedules A and B, the tribal roll (findings 139-40, *supra*) were also adopted at the election held on May 13, 1950. Schedule A was adopted by a vote of 17 to 16. The adoption into the tribe of each of the 18 persons on Schedule B was approved by varying majorities.

148. Residence on the Hoopa Valley Reservation was not a requirement for inclusion on Schedule A, the list of allottees and their descendants. "Many" (the word of the Government's District Agent in forwarding the official roll for approval) of the persons on Schedule A were not then residents of the Hoopa Valley Reservation.

149. In June, 1950, a Hoopa Valley Business Council was elected, as provided in the constitution and bylaws.

150. The Hoopa Valley Business Council, although its jurisdiction was by the constitution limited to the Square (finding 146, *supra*) acted upon matters in the other parts of the reservation, as had its predecessor, the Hoopa Business Council (finding 130, *supra*), such as approvals of land selections outside the Square and a right of way for a road outside the Square.

151. On February 1, 1951, the Director of the Sacramento Area Office of the Bureau of Indian Affairs advised the Superintendent of the Hoopa Valley Reservation that the

Indians of the Klamath Strip should be represented on the Hoopa Valley Business Council, as follows:

\* \* \* \* \*

It is our opinion that the title status of the main portion of the Hoopa Valley Reservation and that of the Klamath River Strip extending downstream approximately 20 miles from this area is exactly the same, therefore any funds derived from the resources of the Klamath River Strip area should be accredited to the Indians of the Hoopa Valley Reservation. The Indians of the so-called Klamath Strip are, in our opinion, members of the Hoopa Valley Reservation.

We agree with your thought in the second paragraph of your letter that the Indians in the so-called Klamath Strip should have representation on the Hoopa Business Council.

We do not have any contemplated timber sales in this area at the present time, although, as you know, there have been several requests for such sales.

152. (a) On December 6, 1951, the Hoopa Valley Business Council appointed a committee to formulate a plan for the enrollment of additional Indians with the Hoopa Valley Tribe on a "C" Roll.

(b) The "C" Roll committee submitted a report at the March 28, 1952, meeting of the council with a request that the council fix the period of residence on the Hoopa Valley Reservation that would be required for enrollment on the "C" Roll.

(c) A year later, on April 2, 1953, the council established requirements for enrollment on the "C" Roll and set June 2, 1953, as the deadline for the acceptance of applications. These requirements were that an applicant must have resided in Hoopa for a period of 15 years, must have had forebears born on a ranchero on the Square; and must be of at least one-quarter Hoopa blood. On June 10, 1954, the council adopted a resolution declaring eighteen applicants for enrollment on the "C" Roll to be members of the Hoopa Valley Tribe.

153. On March 25, 1952, the Commissioner of Indian Affairs approved Schedules A and B, which had been adopted May 18, 1950 (finding 147, *supra*) and on September 4, 1952, he approved the constitution, with certain exceptions

(withholding approval of a tribal court and requiring that the function of approval of the actions of the council be lodged in the Area Director rather than the Commissioner).

154. By letter dated September 4, 1952, the Commissioner advised the Chairman of the Hoopa Valley Business Council that: "There is no objection to the operation of tribal business in accordance with the Constitution and Bylaws adopted by the Hoopa Valley Indians in a referendum held on May 13, 1950, until such time as this office and the Hoopa Valley Indians can establish suitable organization under provision of the laws of the State of California \* \* \*."

155. On November 6, 1950, the Hoopa Valley Business Council adopted the following resolution defining the criteria which it had employed 6 years earlier in compiling the "C" Roll and purporting to clarify the criteria employed by the former Hoopa Business Council in compiling, some 10 years earlier, Schedules A and B, the so-called "Official Roll of the Hoopa Valley Tribe as of October 1, 1949," as follows:

Whereas: The absence of written rules and procedures to explain the composition of the "Official Roll of the Hoopa Valley Tribe as of October 1, 1949," also corrections thereto, has been conducive to various interpretations of eligibility requirements, and,

Whereas: Lack of consistent actions in the determination of eligibility of applicants has resulted in charges that the Business Council has not acted in strict accordance with the Constitution and Bylaws of the Hoopa Valley Tribe, and,

Whereas: There is need for an accurate and complete membership roll to be used in conjunction with the allotment program desired by the Hoopa Valley Tribe.

Now therefore be it resolved: That the following definitions accurately describe the procedures followed and clarify the intent not heretofore expressed in the membership requirements as set forth in Article 4 of the Constitution and Bylaws of the Hoopa Valley Tribe approved September 4, 1952:

#### Definitions

##### 1. Hoopa Valley Tribe

The Hoopa Valley Tribe consists of remnants of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, and Tish-tang-stan Bands of Indians residing

within the twelve-mile square reservation created June 23, 1878, and their descendants.

2. Official Roll of the Hoopa Valley Tribe as of October 1, 1949

"The Official Roll of the Hoopa Valley Tribe as of October 1, 1949" consists of Schedule A captioned "Official Roll as of October 1, 1949, of Members of the Hoopa Valley Tribe Who May Participate in Tribal Benefits and Moneys" and Schedule B captioned "Addition to the Official Roll of Members of the Hoopa Valley Tribe Who May Participate in Tribal Benefits and Moneys" both schedules being approved at a general election on May 13, 1950, and approved by the Commissioner of Indian Affairs on March 25, 1952. Approval of the Schedule B applicants was given by voting on the 18 individuals named on the list.

3. Schedule A.

Schedule A consists of allottees living on October 1, 1949, whose names appear on the J. B. Mortsolf original allotment schedule for the Hoopa Valley Reservation approved March 2, 1922, and descendants of such allottees living on October 1, 1941.

4. Schedule B.

Schedule B consists of applicants living as of October 1, 1949, and filing at the same time as applicants who were included on Schedule A, whose residence within the twelve-mile square area of the Hoopa Valley was not subject to question, who although eligible to have received allotments were never allotted but who were generally considered as members of the Hoopa Valley Tribe and permitted to participate in Tribal Affairs, and their descendants living on October 1, 1949.

5. Corrections.

Corrections to the Official Roll of the Hoopa Valley Tribe as of October 1, 1949 were authorized under Article 4, Section 1(2) during a period of five (5) years ending September 4, 1957. Such corrections applied to: "Persons born not later than October 1, 1949, who qualified by the same requirements as met by persons on either Schedule A or Schedule B comprising the October 1, 1949 roll, whose applications were filed within the five year period ending September 4, 1957."

6. Schedule C.

Pursuant to authorization contained in Article 4, Section 2 of the Constitution and Bylaws a schedule C appli-

cation procedure was devised. A Schedule C applicant was required to have resided within the Hoopa Valley Reservation for a minimum of 15 years, to have had fore-bearers born within the twelve-mile square Hoopa Valley Reservation, to have had at least 1/4 degree Hoopa blood or have been a legally adopted child having at least 1/4 degree Indian blood and to have filed an application within a sixty(60) day period ending June 2, 1953.

#### 7. Children.

"Children" as used in Article 4, Section 1 (b) is restricted to persons born after October 1, 1949.

#### *Procedures*

The C Schedule established certain specific requirements to be met by those persons who were ineligible for enrollment under the requirements of Schedule A and Schedule B. Eligibility was determined on an individual basis and did not automatically pass from a parent to a child born prior to October 1, 1949. However, once an individual was approved for membership as a C Schedule applicant, he acquired the same rights and privileges as other enrolled members.

156. The following month, on December 11, 1959, the Hoopa Valley Business Council adopted a resolution amending the resolution of November 6, 1959, purporting again to clarify the criteria employed by the former Hoopa Business Council in compiling Schedule A, which with Schedule B comprised the so-called "Official Roll of the Hoopa Valley Tribe as of October 1, 1949". This resolution amended definitions 2 and 3 of the prior resolution (preceding finding) to read as follows:

#### 2. Official Roll of the Hoopa Valley Tribe as of October 1, 1949.

The Official Roll of the Hoopa Valley Tribe as of October 1, 1949 consists of Schedule A and Schedule B, as herein defined, both schedules being approved at a general election on May 13, 1950, and by the Commissioner of Indian Affairs on March 25, 1952.

#### 3. Schedule A.

Schedule A consists of allottees living on October 1, 1949, and descendants of allottees living on October 1, 1949.

*1917-1968—Proceeds of the Sale of the Lands of the Old Klamath River Reservation*

157. The 1892 act which provided for the sale of the lands of the Klamath River Reservation (finding 77, *supra*) provided, also, that the proceeds of the public sale of lands were to be a fund used by the Secretary of the Interior for the "maintenance and education" of the resident Indians. In 1917 the statute was amended to add to these purposes "the *pro rata* improvement of individual Indian allotments" and "the construction of roads, trails, and other improvements for their benefit." Act of March 2, 1917, 39 Stat. 969, 976.

158. The proceeds of the public sale of lands of the old Klamath River Reservation were held in a Treasury account entitled "Proceeds of Klamath River Reservation," and interest on the sums therein was credited to an interest account with the same name.

159. In 1918 a road costing approximately \$16,000 was built through the area of the old Klamath River Reservation with the use of funds from the account "Proceeds of Klamath River Reservation." While the work was underway, Congress enacted general legislation that tribal funds could be spent only pursuant to a specific appropriation. Sec. 27, Act of May 18, 1916, 39 Stat. 123, 158. Thereafter \$3,215.12 was expended by the Superintendent to complete the road, without such an appropriation. In 1920 Congress, after the fact, authorized payment of this sum in the Act of February 14, 1920, 41 Stat. 408, 418, as follows:

That the Secretary of the Interior and the Secretary of the Treasury be, and they are hereby, authorized to allow payment of an indebtedness amounting to \$3,215.12 incurred by the Superintendent of Hoopa Valley Agency, California, during July, August, and September, 1918, in the construction of a trail on the Klamath River Reservation, from the tribal fund known as "Proceeds of Klamath River Reservation, California," which was made available for that and other purposes by the Act of March 2, 1917 (Thirty-ninth Statutes at Large, page 976), but from which no expenditures were authorized by section 27 of the Act of May 25, 1918 (Fortieth Statutes at Large, page 591.)

160. On December 31, 1942 Superintendent Boggess requested authorization of an expenditure of \$200 from "the tribal fund of the Lower Klamath Indians" (by which he apparently meant the account "Proceeds of Klamath River Reservation"), as distinguished from what he characterized as the "tribal fund of the Hoopa Valley Indians" (by which he presumably meant the all-reservation fund in the account "Proceeds of Labor, Hoopa Valley Indians," finding 167, *infra*), for the expenses of a visit by a committee of Lower Klamath Indians to the State legislature to seek a bill reimbursing the Indians for losses by a closing of the river to fishing in 1933.

161. As of March 19, 1947 there was \$5,107.35 in the account "Proceeds of Klamath River Reservation" and \$3,204.10 in the parallel interest account.

162. On March 19, 1947 the Superintendent reported with his recommendation for approval a "request from the tribal council of this area" for an allotment of \$300 from the interest account to pay the costs of a trip to Sacramento in re the "Claims of California Indians." (There was no such council. The record shows only a resolution requesting such an allotment, passed 25 to 0 "[a]t a meeting of the Yurok Indians of the lower Klamath River held at Klamath California on March 23, 1947.")

163. A letter from the Sacramento Area Office of the Bureau of Indian Affairs dated February 3, 1954 addressed to the secretary of the "Yurok Tribal Organization" (finding 132, *supra*), stated that the office had been allotted \$1,000.00 of "Yurok Tribal funds," presumably funds in the account "Proceeds of Klamath River Reservation" for the program submitted by the secretary, including travel expenses of tribal delegates.

164. On September 19, 1934, by Department order in the Department of the Interior, such of the land on the former Klamath River Reservation as had been opened for public settlement under the provisions of the Act of June 17, 1892, (finding 77, *supra*) but which had not been settled upon, was withdrawn from disposition pending possible restoration to tribal ownership. By a subsequent order on November 5, 1935, this land was continued in a state of withdrawal.

165. The withdrawal from sale of unsold lands of the

former Klamath River Reservation (preceding finding) was made permanent in 1958. The Act of May 19, 1958, 72 Stat. 121 provided for the restoration of tribal ownership of 159.57 acres of land on the reservation at Klamath River, California and of other, larger tracts on other reservations. Title to "the lands restored to tribal ownership" was to be in the United States in trust for "the respective tribe or tribes" and the various tracts were "added to and made a part of the existing reservations for such tribe or tribes."

*1955—Payment by the Government of the Income from the Square Exclusively to Persons on the Official Roll of the Hoopa Valley Tribe*

166. In 1951, the Sacramento Area Director of the Bureau of Indian Affairs (apparently the Commissioner's delegate in such matters (see finding 153, *supra*)) advised that any funds derived from the resources of the Klamath River Strip area of the reservation should be credited to the account of the Indians of the Hoopa Valley Reservation. His letter is quoted in finding 151, *supra*.

167. Until 1955, any revenues from both parts of the Hoopa Valley Reservation—the Square and the Addition—were deposited in a single United States Treasury Account, No. 14X7236, entitled "Proceeds of Labor, Hoopa Valley Indians." The interest derived from the funds in this account was credited to United States Treasury Account No. 14X7736, entitled "Interest on Proceeds of Labor, Hoopa Valley Indians." Disbursements were made from these accounts for improvements on all parts of the reservation.

168. Although all the revenues from the reservation went into one account (preceding finding), Superintendent Boggess seems to have sought to relate the benefits from expenditures to the place of the source of the funds being expended. Thus, at a time in 1938 when the total revenues in Account No. 14X7236 derived from outside the Square were \$2,511.45, of which \$2,263.80 had been derived from a contract with a lumber company to cut timber at Johnson's Village on the Connecting Strip, Superintendent Boggess planned to spend only \$2,263.80 for water developments at Johnson's Village, as "the amount received from the sale of cedar in that locality," though the appropriation for the water development at

Johnson's Village was \$2,500.00. Actually, additional sums of \$187.70 and \$53.04 in the account had also been derived from the cutting of timber on unallotted trust-status tribal land at Johnson's Village.

169. On April 23, 1954 the Area Director of the Indian Bureau at Sacramento requested the establishment of an account for depositing "receipts to the credit of the Yurok Indians of California." The response of the Fiscal Section, dated April 29, 1954 listed five reservations in which "different groups of Yurok Indians resided"; on the list were "Hoopa Valley Reservation" and "Klamath River Reservation." On July 1, 1954 the Director of the Division of Budget and Finance in the Office of the Secretary requested the Treasury to establish two accounts as follows:

- 147153 Deposits, Proceeds of Labor, Yurok Indians of Lower Klamath River, California.
- 147154 Deposits, Proceeds of Labor, Yurok Indians of Upper Klamath River, California.

Trust fund receipt, appropriation and interest accounts were opened, one each for the "Yurok Indians of Lower Klamath River," all ending in the number 53, and one each for the "Yurok Indians of Upper Klamath River," all ending in the number 54.

170. Commencing in 1955, revenues derived from the resources of the Connecting Strip were credited to Account No. 14X7154, "Proceeds of Labor, Yurok Indians of Upper Klamath River, California" and revenues derived from the resources of the Lower Klamath River strip were credited to Account No. 14X7153, "Proceeds of Labor, Yurok Indians of Lower Klamath River, California." As of 1969 approximately \$72,070 had been credited to Account No. 14X7154, and \$3,956 to Account 14X7153. Revenues derived from the resources of the Square continued, as before, to be credited to the accounts for the benefit of the "Hoopa Valley Indians" (finding 167, *supra*). The major portion of these revenues has been from timber sales.

171. Beginning in 1955 and continuing to the present time, the Secretary of the Interior, upon requests made by resolutions of the Hoopa Valley Business Council, has each year disbursed, from the accumulated income in Account No. 14X7236 and its interest Account No. 7736 for the Hoopa

Valley Indians (finding 167, *supra*), per capita payments to the Indians on the official roll of the Hoopa Valley Tribe organized pursuant to the constitution and bylaws adopted at the election of May 13, 1950 (findings 136 *et seq.*, *supra*).

172. The total of the per capita payments through February 1969 was \$12,657,666.50. The payments were made at the following times and in the following amounts:

Payment period	Total amt. each payment	Amnt. paid each Indiv.
#1 Jan 1965	\$78,500	\$100
Suppl. Aug 1965	1,600	
Suppl. Apr 1966	1,900	
#2 Sept 1966	\$158,600	\$200
Suppl. Dec 1966	10,800	
#3 Jan 1967	\$284,600	\$200
Suppl. Jan 1967	3,800	
#4 Oct 1967	\$178,600	\$200
#5 Apr 1968	\$277,500	\$200
Suppl. Mar 1969	4,200	
Suppl. Apr 1969	300	
#6 Dec 1969	\$264,100	\$275
#7 Apr 1970	\$261,630	\$270
Suppl. Aug 1970	270	
#8 Dec 1970	\$278,942	\$281
#9 Apr 1971	\$278,981	\$279
#10 Dec 1970	\$446,304	\$448
#11 Apr 1971	\$459,098	\$444
#12 Dec 1971	\$382,320	\$380
Suppl. Apr 1972	720	
Suppl. June 1972	1,800	
#13 Apr 1972	\$381,630	\$384
Suppl. June 1972	1,778	
Suppl. Apr 1972	1,420	
#14 Dec 1972	\$479,600	\$426
#15 Apr 1973	\$480,630	\$433
#16 Dec 1973	\$703,425	\$622.80
#17 Apr 1974	\$793,700	\$620
#18 Dec 1974	\$625,240	\$620
#19 Feb 1975	\$625,987	\$641
#20 Dec 1974	\$684,237.80	\$612.80
#21 Apr 1975	\$696,668	\$613
#22 June 1975	\$696,000	\$600
#23 Dec 1975	\$534,850	\$444.80
#24 Mar 1977	\$634,417.80	\$443.80
#25 Oct 1977	\$220,630	\$110
#26 Nov 1977	\$220,630	\$110
#27 Feb 1978	\$220,630	\$110
#28 June 1978	\$220,630	\$110
#29 Aug 1978	\$468,120	\$274.80
#30 Nov 1978	\$468,120	\$274.80
#31 Feb 1979	\$464,746.80	\$271.80
	\$12,657,666.80	\$11,694.80

173. The Secretary of the Interior has refused and has continued to refuse to distribute any income derived from the Square portion of the Hoopa Valley Reservation to any Indians of the Hoopa Valley Reservation other than those who are members of the Hoopa Valley Tribe according to its official roll.

174. In 1958 the Deputy Solicitor of the Department of the Interior ruled that "no Indians other than those enrolled as members of the Hoopa Tribe of the original 12-mile square reservation and their descendants, have rights of participation in the communal property on that part of the Hoopa Valley Reservation." 65 Dec. Dept. Int. 59, 68 (1958). Making no reference to the presence of Klamaths on the Square, he held that the Hoopas had exercised jurisdiction over the Square from earliest times and that their rights were vested by 1891. The executive order of that year he held to have been merely "an aid to the administration of these two separated areas" and as making the former Klamath River Reservation and the Connecting Strip a part of the enlarged Hoopa Valley Reservation only "technically." 65 Dec. Dept. Int. at 63, 64.

The Government does not in the instant case contend either that this opinion has any binding force or that it is correct in its facts. The opinion does not reflect the facts set out in these findings, primarily the presence of Klamaths on the Square from aboriginal times continuously to 1891 and beyond; moreover, it contains errors of commission and omission, among them the impression given throughout that the Hoopas were the sole occupants of the Square, from the time before the first location of the reservation in Hoopa Valley; that the tribal council on the Square was a permanent institution from 1916 (65 Dec. Dept. Int. at 62; compare findings 109-112, *supra*); the impression given that Chief Clerk Hauke's letter of July 17, 1916, was an approving response to the council's letter of June 19, 1916 (65 Dec. Dept. Int. at 66; see finding 102, *supra*); and the statement that the allotments approved on the Square were submitted by the Hoopa Tribal Council (65 Dec. Dept. Int. at 67; compare findings 86-97, *supra*).

*Ultimate Findings and Conclusions on the Common Issue  
of the Exclusive Rights of the Hoopas in the Square*

175. Under the Act of April 8, 1864, authorizing the President to set apart and locate not more than four reservations in California, at least one to be in the northern district, of such size as he found suitable, for the accommodation of the Indians of California, without specification of the tribes to be so accommodated, the President had discretion to authorize any Indian tribes of California to reside upon such reservations as he set apart. No Indian tribe resident upon a reservation created under the act could obtain vested rights to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation. *Healing v. Jones*, 210 F. Supp. 125, 138, 153, 170 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963); *Healing v. Jones*, 174 F. Supp. 211, 216 (D. Ariz. 1959); *Crow Nation v. United States*, 81 Ct. Cl 238, 278 (1935).

176. Superintendent Wiley's public notices of August 21, 1864 and February 18, 1865 (findings 13, 21, *supra*) locating the Hoopa Valley Reservation on the tract thereafter called the Square, were issued pursuant to the authority of the act of 1864 and subject to Presidential approval and, having made no mention of any Indian tribe, provisionally established the reservation for such Indians or tribes as might be settled or reside upon it with Presidential authority.

No tribe settled upon or residing upon the reservation pursuant to the notices could, in view of the grant of discretionary authority by the act of 1864 to the President, obtain vested rights in the Square to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation.

177. The so-called "treaty" made at Hoopa Valley in 1864 (finding 15, *supra*), said to be the source of the Hoopas' rights in the Square, is concededly not a binding treaty in the constitutional sense. An agreement by an executive officer could not foreclose the President's authority under the act of 1864 to establish a reservation for such Indians as might be settled there with his approval, and thereafter to enlarge

the reservation for the common benefit of the Indians of the added lands and of the original reservation.

178. Any rights to Hoopa Valley given by the treaty to the Hoopas were given equally to other tribes as well, including the Klamaths. The treaty was either made with a number of tribes including the Klamaths or the Klamaths became entitled to its benefits, in accordance with Section 1, Article 1 of its text (finding 15, *supra*), when they laid down their arms and lived in peace with the Government, or both.

179. The Hoopas were not the sole occupants of the Square, either in aboriginal times or thereafter. While the Hoopa Valley was the native territory of the Hoopa Indians, there were native villages of the Yuroks on the Square, in the canyon north of the valley proper, near the junction of the Trinity with the Klamath River, and nearby at a small distance from the river. At about the time of the aforesaid notices by Superintendent Wiley and thereafter, the residents of the valley included at least Hoopa, Klamath, and Redwood or Chilula Indians.

180. The evidence is abundant that the reservation was intended, from the outset, for the accommodation of numbers of tribes of Northern California, including the Klamaths, such as might reside there with Presidential approval, and that Wiley, his successor and the officers of the Indian Office throughout recognized the rightful presence on the Square of a number of tribes (until the opinion of the Deputy Solicitor, in 1958 (finding 174, *supra*), approving the action of the Secretary of the Interior complained of in this case).

181. President Grant's order of June 23, 1876, establishing the Hoopa Valley Reservation "as one of the Indian reservations authorized to be set apart in California by act of Congress approved April 8, 1864" (finding 29, *supra*), established the reservation not for any specific tribe or tribes, none having been mentioned in the order, but for such tribes as might reside or settle there, then or thereafter, with the approval of the President, and the tribes as were then resident upon it were subject to further exercise of Presidential authority under the act with respect to the reservation.

182. The residents of the reservation at the time of President Grant's order included Hoopas, Klamaths, Saiaz and Redwoods. Still others (besides bands or sub-groups of

Hoopas) had been settled there between 1864 and 1876, but have not been identified as remaining there in 1876.

183. President Harrison's order of October 16, 1891 (finding 33, *supra*), extending the boundaries of the Hoopa Valley Reservation to include the former Klamath River Reservation and the connecting strip of land between the two reservations, was a lawful exercise of the President's "continuing authority" under the act of 1864, and "large discretion about exercising it," "to alter and enlarge the [reservation] from time to time in the light of experience." *Donnelly v. United States*, 228 U.S. 243, 256-57 (1913).

The words of the executive order "extended" the "limits" of the Hoopa Valley Reservation, "a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart \* \* \* by Act of Congress approved April 8, 1864" "so as to include" the Addition, with the proviso that tracts to which valid rights had attached under the laws of the United States were "excluded from the reservation as hereby extended."

The plain and natural effect of the order was to create an enlarged reservation in which the Indians of the original reservation and the Indians of the added tracts would have equal rights in common. Cf. *Halbert v. United States*, 283 U.S. 753 (1931); *Quinaielt v. United States*, 102 Ct. Cl. 822 (1945). In extending the boundaries of the Square to include the Addition, peopled by Yurok Indians of Northern California, the executive order was patently carrying out the purpose of the act of 1864 to provide a reservation or reservations in the northern district of California for the accommodation of the Indian tribes of the region.

184. An exhaustive study of the background of the executive order of 1891 and of the legislative origins of the Act of June 17, 1892 (27 Stat. 52), providing for allotment and sale of the Klamath River Reservation, shows no sign of a plan, intention or understanding, executive or Congressional, such as is claimed by defendant to have existed, that the executive order of 1891 should join the Klamath River Reservation and the Connecting Strip to the Square for administrative or "technical" purposes only—as separate reservations without effect on the substantive rights of the Indians of the Square, or otherwise than as a single, integrated reservation in which

all the Indians of the reservation as enlarged should have equal substantive rights. The intention defendant contends for is not once articulated in the voluminous history. No fact in the history, moreover, supports the assertion that the executive order was intended for convenience in administration only and without effect on substantive rights.

185. It quite clearly appears that the intended purpose of the executive order was to accomplish just such an enlargement of the Hoopa Valley Reservation as would bring about a single, enlarged, integrated reservation, effective upon substantive rights.

Soon before the issuance of the executive order, the courts had held that the Klamath River Reservation had been abandoned as a reservation and had accordingly refused to punish white traders who entered the reservation area. Also, bills were steadily being proposed to Congress for the public entry and sale of the lands of the Klamath River Reservation. Some of these bills forbade allotment of lands thereon to the Indians as their homes and directed the removal of the resident Indians to the Hoopa Valley Reservation. The Department of the Interior opposed these bills unless they were amended to permit allotment. The Department had two objectives in mind—to allot lands in severalty to the Indians of the Klamath River Reservation and of the Connecting Strip (together constituting what became the Addition), and to expel traders from the Klamath River Reservation. Reservation status for the Addition would achieve both objectives. Only the incorporation of the Klamath River Reservation into an existing reservation would do, for the maximum of four reservations authorized by the act of 1864 had already been created. Incorporation of the Klamath River Reservation and the Connecting Strip into the adjoining Hoopa Valley Reservation was the natural solution; it had been recommended and considered for years before.

Joinder of the Klamath River Reservation to the Hoopa Valley Reservation for administrative purposes only or for less than all purposes would have jeopardized the achievement of the desired objective, in view of the necessity that the executive action pass muster with both courts and Congress, which were both already of the view that Klamath River Reservation had been abandoned, for failure of the executive

to incorporate it into one of the four existing reservations. As for the Connecting Strip, it had never had reservation status, and it could not get such status by a joinder to the Hoopa Valley Reservation "for administrative purposes only" but only by an incorporation, for all purposes, into a lawful reservation. No limitation whatsoever was, therefore, intended or imposed on the natural legal consequence of the incorporation of the Addition into the reservation.

The intention to affect substantive rights is confirmed by the explicit exception, in the text of the executive order (finding 33, *supra*), "from the reservation as hereby extended," of any tract within the Addition to which valid rights under the laws of the United States had already attached. All else was to become part and parcel of the Hoopa Valley Reservation.

The materials cited by defendant do not prove, as claimed, that Congress understood the executive order otherwise or that Congress understood that the reservation was enlarged in such a manner as not to affect the common rights of the Indians of the enlarged reservation in the communal property of all parts of the reservation.

Almost immediately following the executive order, Congress on June 17, 1892 enacted a bill for the allotment of lands on the Klamath River Reservation, to be followed by the public sale of the remaining land, the proceeds of sale to be a fund for the benefit of the Indians of the reservation (finding 77, *supra*). Bills of this nature had been considered for many years on the premise that the Klamath River Reservation was abandoned (see findings 50-77, *supra*); the proponents were not about to make their cause less attractive by amending the name of the reservation to be sold to call it the "former Klamath River Reservation, now part of the Hoopa Valley Reservation." Therefore neither the apparent disregard in the bill of the effect of the 1891 executive order on the Klamath River Reservation (perhaps in fact an ignorance of the issuance of the executive order) nor the continued existence of the fund of the proceeds of sale for the benefit of the Indians of the "Klamath River Reservation" tends to show any such Congressional understanding of the executive order as defendant contends for, or, indeed, a Congressional understanding of any kind concerning the executive order.

The fact is that the act of 1892, the administration over the years of the fund created by the act and the more recent legislative and executive postscript dealings with the "Klamath River Reservation" (findings 157-165, *supra*) were not intended or understood by their draftsmen and makers to have any bearing on the rights of the residents of the Hoopa Valley Reservation as extended by the 1891 executive order. Those men simply did not have the Hoopa Valley Reservation in mind (see finding 77, *supra*); there was no need that they should.

186. The highly complex program for allotments on the Hoopa Valley Reservation which extended from about 1890 to 1930 (findings 78-100, *supra*), too, shows no trace of such a plan, intention or understanding as defendant claims underlay the executive order of 1891. The references to the separate parts of the reservation, in the texts of the instructions to the allotting agents, were simple matters of convenient naming of the three areas of the reservation to be allotted and are wholly immaterial to show a division of the reservation into separate parts for substantive purposes. The restriction of allotments on the Lower Klamath Strip to residents of the Old Klamath River Reservation was the requirement of the act of 1892 (finding 77, *supra*), providing for allotments on that reservation before public sale, reinforced by the provisions of the General Allotment Act of 1887 (finding 59, *supra*). When the question arose of the rights of Indians of the Addition to allotment on the Square, under the executive order of 1891, the Commissioner in 1933 ruled that all Indians of the reservation, Addition and Square, were equally entitled to allotment on the Square (finding 96, *supra*).

The allotment program was marked by other administrative rulings as well, by high and low ranking officials, confirmatory of plaintiffs' position herein. See findings 101-108, *supra*. A notable such ruling was made by Chief Clerk Hauke in 1916 when he gave the opinion (finding 102, *supra*) that not the Hoopas alone but a number of tribes including the Klamaths were entitled to recognition as Indians of the reservation and, therefore, to enrollment upon the reservation and, ultimately, to allotment.

187. The facts of the organizations of Indians on the reservation, prior to the organization of the Hoopa Valley Tribe

in 1950 to claim exclusive rights to the Square, are inconclusive and therefore immaterial on the issue presented. The ad hoc tribal council of 1916 was directed by the Indian Office to be representative of all the tribes on the reservation, including Klamaths, but in fact the council was composed of residents of the Square and though it contained a Klamath among its members unanimously petitioned Washington to exclude Klamaths from eligibility to allotment on the Square. The tribal council created in 1933 was ordered by one Commissioner to be representative of all the tribes on the reservation, but his successor (unknowingly, on the proof here made) approved a council representative of the Square only. And that council proceeded to exercise jurisdiction, both legislative and judicial, over the entire reservation, Square and Addition. Though the council was representative of the Square or the "Hoopa tribe" only, for years at a time Yuroks were its members and chairmen. Even the council's Indian judge, who heard cases arising all over the reservation, was a Yurok (who had been allotted on the Connecting Strip and was a resident of the Square).

188. Nothing appearing to the contrary, and a great deal appearing in support, it is concluded that the effect of the executive order of 1891 was that all the Indians of the reservation as thereby extended—Addition and Square—got equal rights in the enlarged reservation and thus that the rights of Indians of the Addition are equal to those of the Indians of the Square, the Hoopa Valley Tribe or any other Indians of the reservation.

189. It follows that defendant acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to the income from the unallotted trust-status lands on the Square. Such of the plaintiffs as are found herein to be Indians of the reservation will become entitled to share in the income from the entire reservation, including the Square, equally with all other such Indians, including the Indians of the Square.

*Findings on the Individual Plaintiffs*

190. The data in this finding were used in determining whether the residences and birthplaces of the individual

plaintiffs were on or off the reservation. The data did not clarify all the cases and in the further proceedings it should be made clearly to appear whether birthplaces and residences are located on or off the reservation.

Villages of the reservation are:

*Lower Klamath Strip:*

Requa or Rekwoi  
 Klamath  
 Hoppaw or Hopau  
 Waukel or Wohkel  
 Scaath  
 Turwar or Terwer  
 Starwein Flat  
 Suppur, Serper or Surpur

*Connecting Strip:*

Johnson's Village or Wauteck  
 Cautep or Kotep  
 Pecwan or Pakwan  
 Yocktar or Yockta—Donley's Prairie  
 Schragoine or Surgone, Seragoine, Sregon  
 Mettah or Meta  
 Natchka or Natchko  
 Moreck or Murek  
 Cappell or Kepal  
 Waase or Waasa or Whusi  
 Mareep or Merip  
 Kanick or Kanek  
 Waseck, Wahsek or Waseek  
 Martins Ferry  
 Weitchpec, Wetchpeck or Weitspus

*The Square:*

Northern Part: Pectah, Pactaw or Pektul  
 Valley:

Norton Ranch  
 Mescat, Mascat, Miskut or Meakut Village  
 Soctish Ranch  
 Takinitlding Village, Hostler or Hosler  
 Tsewenalding or Senalton Village  
 Matilton or Medilding Village  
 Kentuck or Howunkut Village  
 Campbell Ranch  
 Tishtangatang or Djishtangading Village  
 Bennets Ranch  
 Spencers Ranch  
 Jackson Ranch

191. *Jessie Dorothy Bristol Alameda*. Born 1918;  $\frac{3}{4}$  blood Indian ( $\frac{1}{2}$  Yurok,  $\frac{1}{4}$  Hoopa). Born on the Connecting Strip and schooled there and on the Square. Has lived on the Square full time since 1928. Listed in the reservation censuses from 1919 to 1940, the year of the last complete census. (Entitled to recover as an Indian of the reservation.)

192. *Louisa Doed Wilder Ames*. Born 1889;  $\frac{1}{2}$  blood Indian ( $\frac{1}{4}$  Hoopa,  $\frac{1}{4}$  Yurok). Born on the Connecting Strip and schooled there and on the Square. Lived off the reservation from the time she first married, at a date which does not appear, to 1964. Has lived on the reservation since then. Was allotted on the Connecting Strip and was listed in all censuses from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

193. *Rethema Billy Peters Pollock Barber*. Born 1913; full-blooded Indian (Yurok). Born on the Square and lived there until she was 8, when she moved with her family to her grandmother's allotment on the Connecting Strip. Lived on the Connecting Strip to a date later than 1922, lived on the Square between 1936 and 1939, and now lives on the Connecting Strip. She has held an assignment of land on the Square, later transferred to her daughter, and was listed in the censuses from 1914 to 1940. (Entitled to recover as an Indian of the reservation.)

194. *Lulu Smith Donnelly*. Born 1883; full-blooded Indian (Yurok). Born on the Connecting Strip and lived there until 1966. Since then has lived off the reservation. Allotted on the Connecting Strip and listed in the censuses from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

195. *Frank A. Donley*, also known as Frank Douglas. Born 1891;  $\frac{1}{2}$  blood Indian (Yurok). Born on the Connecting Strip and lived there for 50 years. Now lives on the Lower Klamath Strip. Allotted on the Connecting Strip. Listed in the censuses for 1894, 1900, and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

196. *Ollie Roberts Sorrell Fosside*. Born 1921; full-blooded Indian ( $\frac{3}{4}$  Yurok,  $\frac{1}{4}$  Hoopa). Born on the Connecting Strip, lived there and schooled there and on the Square. Has lived on the Lower Klamath Strip and on the Connecting Strip.

She was listed on the censuses from 1921 to 1940. (Entitled to recover as an Indian of the reservation.)

197. *Ella Steve Hostler Johnson*. Born 1900; full-blooded Indian (Yurok). Born on the Connecting Strip. Lived on the Square from 1916 to 1933 and thereafter on the Connecting Strip. She selected lands on the Square; the selection was later transferred to one of her sons. Two of her sons and her husband were allotted lands on the Square. She was listed on the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

198. *Henrietta Wilma Masten Lewis*. Born 1942;  $\frac{5}{8}$  blood Indian (Yurok). Born off the reservation. Her father was  $\frac{1}{4}$  Indian (Yurok) and her mother was 100% Yurok, a native of the Connecting Strip. The plaintiff was born after the last complete census. Both her parents were listed on the censuses from 1920 to 1940. Schooled on the reservation. Has lived "most of her life" on the Connecting Strip. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss the effect of birth off the reservation as affecting status, and the facts as to duration of residence off the reservation, and their significance.)

199. *Llewellyn Markussen*. Born in 1932;  $\frac{3}{4}$  blood Indian ( $\frac{1}{2}$  Yurok,  $\frac{1}{4}$  Karok). Born on the Square and lived there as an infant. From the age of 4 in 1936 until 1961 he lived on his mother's assignment on the Square. Since then he has lived on the Connecting Strip. He was omitted from the censuses because his mother had never been listed. His mother was on her application enrolled as an Indian of the reservation in 1936 and was thereafter listed. (Entitled to recover as an Indian of the reservation.)

200. *Theresa Billy Mitchell*. Born 1891; full-blooded Indian (Yurok). Born on the Connecting Strip, lived on the Square as a child and since then has lived, for more than 50 years, on the Connecting Strip, where she was allotted. Listed in the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

201. *George McCovey, Sr.* Born 1917;  $\frac{3}{4}$  blood Indian (Yurok). Born and schooled on the Connecting Strip. Lived on the Square from the time he was married in 1937 to 1960, when he returned to the Connecting Strip where he now lives.

Listed in the censuses from 1918 to 1940. (Entitled to recover as an Indian of the reservation.)

202. *Myrtle Smoker McCovey*. Born in 1899; full-blooded Indian (Yurok). Born on the Connecting Strip and schooled there, on the Square and elsewhere. Lived on her grandmother's allotment on the Lower Klamath Strip from 1919 to 1964 and then moved to Klamath Glen, apparently also on the Lower Klamath Strip. She was listed on the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

203. *Sadie Jones McCovey*. Born 1891; full-blooded Indian (Yurok). Born on the Connecting Strip and lived there. Schooled there and on the Square. Has lived with her husband on his allotment on the Connecting Strip since her marriage in 1915. Has been listed on the censuses from 1915 to 1940. (Entitled to recover as an Indian of the reservation.)

204. *Antone Obie*. Born 1890; full-blooded Indian (Yurok). Born on the Connecting Strip where he lived until 1964 and where he was allotted. In 1964 he moved to Hoopa where he now lives. Listed in the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

205. *Erick William Pearson, Jr.* Born 1931;  $\frac{3}{8}$  blood Indian (Yurok). Born in Lassen County, California of parents one of whom was a non-Indian and the other a  $\frac{3}{4}$  Indian (Yurok) native of the Square. He came to the Square at the age of 2, in 1933, and lived on land assigned to his mother in 1935. Moved in 1937 to a tract on the Square bought by his mother. Has lived on the Square since, except for military service between 1949 and 1951. He was listed on the 1940 census. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss the effect of birth off the reservation as affecting status.)

206. *Frances James Roberts*. Born 1898; full-blooded Indian ( $\frac{3}{4}$  Yurok,  $\frac{1}{4}$  Hoopa). Born on the Connecting Strip and has lived on the Square, the Connecting Strip, and the Lower Klamath Strip. Listed on the censuses for 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

207. *Josephine Cooper Robinson Rogers Ludington Robinson*. Born 1896;  $\frac{3}{4}$  blood Indian ( $\frac{1}{2}$  Yurok,  $\frac{1}{4}$  Wintun).

Born on the Square and lived on the Connecting Strip (except for a "short time" during her marriage) until 1959 when, apparently, she moved to Eureka, off the reservation. She had been omitted from the census and successfully applied for enrollment in 1933, whereupon she was able to accept an assignment on the Connecting Strip. She was listed on the censuses from 1934 to 1940. (Entitled to recover as an Indian of the reservation.)

208. *Alta Mae Kane Rogers*. Born 1933; full-blooded Indian ( $\frac{1}{2}$  Yurok,  $\frac{1}{2}$  Paiute). Born on the Square and lived there and on the Connecting Strip until 1939 when she moved to her father's reservation, the Bishop Indian Reservation. In 1953 she married and, with her husband, moved to the Connecting Strip and lived there until about 1966 when she and her husband moved to Bishop, California. Occasionally visits her cabin on the reservation. She was listed on the censuses from 1933-1940. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss whether claimant has dual tribal status and, if so, the effect on the issue in the case.)

209. *Florence Gensaw Green Shaughnessy*. Born 1902;  $\frac{1}{2}$  blood Indian (Yurok). Born on the Lower Klamath Strip and has lived there for 60 years except for "intermittent" periods of residence in the Humboldt Bay Area. Listed in the censuses 1910 through 1940. (Entitled to recover as an Indian of the reservation.)

210. *Jessie Quinn McCoy Short*. Born 1905;  $\frac{1}{2}$  blood Indian ( $\frac{1}{4}$  Hoopa,  $\frac{1}{4}$  Yurok). Born on the Connecting Strip and lived there as a child and after schooling at Hoopa. Presently resides off the reservation. Listed on the censuses 1910 through 1940. (Entitled to recover as an Indian of the reservation.)

211. *Sam Smoker*. Born 1904;  $\frac{3}{4}$  blood Indian (Yurok). Born on the Square and schooled there and on the Lower Klamath Strip. Has lived on the Square from 1914 to the present. He received a tract of land by assignment in 1935. Listed on the censuses 1910 through 1918. He was thereafter omitted until his application for enrollment was made and approved in 1932. Thereafter he was again listed, from 1932 through 1940. (Entitled to recover as an Indian of the reservation.)

212. *Elwood Theodore Swanson*. Born 1926;  $\frac{1}{2}$  blood Indian (Hoopa). Born off the reservation. Lived part time with his grandmother at Hoopa from the time he was 8. At an unstated time his family moved to Hoopa and he completed grade and high school there; in that period he participated in Hoopa tribal ceremonial dances. He lived on the reservation until his military service; thereafter lived at his birthplace off the reservation. He inherited interests in three allotments on the reservation and sold them. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss the effect of birth off the reservation as affecting status.)

213. *Oscar Lawrence Taylor*. Born 1908; half-blood Indian (Yurok). Born on the Lower Klamath Strip, schooled there and at Hoopa. Since then has lived on the Lower Klamath Strip and for a time on the Connecting Strip, except when he was working off the reservation. Listed on the census rolls from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

214. *Harry D. Timm Williams*. Born 1924; half-blood Indian (Yurok). Born on the Lower Klamath Strip and lived there through high school until 1941 when he moved to the San Francisco area where he took university extension courses. Spends weekends and vacations with his family on the reservation. Listed on the censuses 1930 through 1940. (Entitled to recover as an Indian of the reservation.)

215. *Christopher Young*. Born 1897; half-Indian (Yurok). Born on the Connecting Strip and has lived there all his life. Presently lives there. Listed in the censuses 1900 and 1910 through 1940. (Entitled to recover as an Indian of the reservation.)

216. *Laura Mareep Sam Billy Young*. Born 1891; full-blooded Indian (Yurok). Born and has lived on the reservation all her life, except while attending an Indian school. Listed on the censuses in 1900 and 1910 through 1940. (Entitled to recover as an Indian of the reservation.)

*Ultimate Findings and Conclusions on the Individual Claims*

217. Plaintiffs Louisa Dowd Wilder Ames, Jessie Dorothy Bristol Alameda, Rethema Billy Peters Pollock Barber, Lulu

Smith Donnelly, Frank A. Donley, Ollie Roberts Sorrell Foseide, Ella Steve Hostler Johnson, Llewellyn Markussen, Theresa Billy Mitchell, George McCovey, Sr., Myrtle Smoker McCovey, Sadie Jones McCovey, Antone Obie, Frances James Roberta, Josephine Cooper Robinson Rogers Ludington Robinson, Florence Gensaw Green Shaughnessy, Jessie Quinn McCoy Short, Sam Smoker, Oscar Lawrence Taylor, Harry D. Timm Williams, Christopher Young, and Laura Mareep Sam Billy Young are entitled to recover, as Indians of the Hoopa Valley Reservation, an aliquot share in the revenues of the unallotted trust-status lands of the entire reservation, in an amount to be determined in proceedings under rule 131(c), the amount of recovery to be determined following trial of the claims of the remaining plaintiffs.

218. The claims of plaintiffs Henrietta Wilma Masten Lewis, Erick William Pearson, Jr., Alta Mae Kane Rogers and Elwood Theodore Swanson are set down for retrial.

#### CONCLUSION OF LAW

The court adopts and makes part of its judgment the foregoing findings of fact and ultimate findings and conclusions. Certain of the plaintiffs are entitled to recover in amounts to be determined under Rule 131(c), and the claims of the others are set down for retrial in accordance with the opinion. The case is remanded to the trial judge for further proceedings.

## APPENDIX D

## Title 25, Code of Federal Regulations

PART 83 - PROCEDURES FOR ESTABLISHING THAT  
AN AMERICAN INDIAN GROUP EXISTS AS AN  
INDIAN TRIBE

Sec.

83.1 Definitions.

83.2 Purpose.

83.3 Scope.

83.4 Who may file.

83.5 Where to file.

83.6 Duties of the Department.

83.7 Form and content of petition.

83.8 Notice of receipt of petition.

83.9 Processing the petition.

83.10 Reconsideration and final action.

83.11 Implementation of decisions.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9; and 230 DM 1 and 2.

SOURCE: 43 FR 39361, Sept. 5, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

## § 83.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary-Indian Affairs, or his authorized representative.

(c) "Department" means the Department of the Interior.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Area Office" means the Bureau of Indian Affairs Area Office.

(f) "Indian tribe," also referred to herein as "tribe," means any Indian group within the continental United States that the Secretary of Interior acknowledges to be an Indian tribe.

(g) "Indian group" or "group" means any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

(h) "Petitioner" means any entity which has submitted a petition to the Secretary requesting acknowledgment that it is an Indian tribe.

(i) "Autonomous" means having a separate tribal council, internal process, or other organizational mechanism which the tribe has used as its own means of making tribal decisions independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the Indian culture and social organization of that tribe.

(j) "Member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

(k) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in its governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

(l) "Historically", "historical" or "history" means dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens and officials of foreign governments from which the United States acquired territory.

(m) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption.

(n) "Indigenous" means native to the continental United States in that at least part of the tribe's aboriginal range extended into what is now the continental United States.

(o) "Community" or "specific area" means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations.

(p) "Other party" means any person or organization, other than the petitioner who submits comments or evidence in support of or in opposition to a petition.

#### § 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

#### § 83.3 Scope.

(a) This part is intended to cover only those American Indian groups indigenous to the continental United States which are ethnically and culturally identifiable, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs.

(c) This part is not intended to apply to associations, organizations, corporations or groups of any character, formed in recent times; provided that a group which meets

the criteria in § 83.7(a)-(g) has recently incorporated or otherwise formalized its existing autonomous process will have no bearing on the Assistant Secretary's final decision.

(d) Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe currently acknowledged as being an Indian tribe by the Department, unless it can be clearly established that the group has functioned throughout history until the present as an autonomous Indian tribal entity.

(e) Further, this part does not apply to groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship.

#### **§ 83.4 Who may file.**

Any Indian group in the continental United States which believes it should be acknowledged as an Indian tribe, and can satisfy the criteria in § 83.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

#### **§ 83.5 Where to file.**

A petition requesting the acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary - Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, D.C. 20245. Attention: Federal acknowledgment project.

#### **§ 83.6 Duties of the Department.**

(a) The Department shall assume the responsibility to contact, within a twelve-month period following the enactment of these regulations, all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department. Included specifically shall be those listed in chapter 11 of the American Indian Policy Review Commission final report, volume one, May 17, 1977. The Department shall inform all such groups of the opportunity

to petition for an acknowledgment of tribal existence by the Federal Government.

(b) The Secretary shall publish in the **FEDERAL REGISTER** within 90 days after effective date of these regulations, a list of all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs. Such list shall be updated and published annually in the **FEDERAL REGISTER**.

(c) Within 90 days after the effective date of the final regulations, the Secretary will have available suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to research for required information. The Department's example of petition format, while preferable, shall not preclude the use of any other format.

(d) The Department shall, upon request, provide suggestions and advice to researchers representing a petitioner for their research into the petitioner's historical background and Indian identity. The Department shall not be responsible for the actual research on behalf of the petitioner.

#### **§ 83.7 Form and content of the petition.**

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a) through (g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition.

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantially [sic] continuous Indian identity shall include one or more of the following:

- (1) Repeated identification by Federal authorities;
- (2) Longstanding relationships with State governments based on identification of the group as Indian;
- (3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;
- (4) Identification as an Indian entity by records in courthouses, churches, or schools;
- (5) Identification as an Indian entity by anthropologists, historians, or other scholars;
- (6) Repeated identification as an Indian entity in newspapers and books;
- (7) Repeated identification and dealings as in Indian entity with recognized Indian tribes or national Indian organizations.

(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.

(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.

(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendants from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity. Evidence

acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

- (1) Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;
- (2) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being an Indian descendant and a member of the petitioning group;
- (3) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning entity;
- (4) Affidavits of recognition by tribal elders, leaders, or the tribal governing body, as being an Indian descendant of the tribe and a member of the petitioning entity;
- (5) Other records or evidence identifying the person as a member of the petitioning entity.
- (f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.
- (g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

#### § 83.8 Notice of receipt of petition.

(a) Within 30 days after receiving a petition, the Assistant Secretary shall send an acknowledgment of receipt, in writing, to the petitioner, and shall have published in the **FEDERAL REGISTER** a notice of such receipt including the name and location, and mailing address of the petitioner and other such information that will identify the entity submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined.

(b) Groups with petitions on file with the Bureau on the effective date of these regulations shall be notified within

90 days from the effective date that their petition is on file. Notice of that fact, including the information required in paragraph (a) of this section, shall be published in the **FEDERAL REGISTER**. All petitions on file on the effective date will be returned to the petitioner with guidelines as specified in § 83.6(c) in order to give the petitioner an opportunity to review, revise, or supplement the petition. The return of the petition will not affect the priority established by the initial filing.

(c) The Assistant Secretary shall also notify, in writing, the Governor and attorney general of any State in which a petitioner resides.

(d) The Assistant Secretary shall also cause to be published the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest to the petitioner. The notice will include, in addition to the information in paragraph (a) of this section, notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to the petition. Such submissions shall be provided to the petitioner upon receipt by the Federal acknowledgment staff. The petitioner shall be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

#### **§ Processing the petition.**

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evidence, and the factual statements contained therein. The Assistant Secretary may also initiate other research by his staff, for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status, and may consider any evidence which may be submitted by other parties.

(b) Prior to actual consideration of the petition, the Assistant Secretary shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon

an initial review, and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification.

(c) Petitions shall be considered on a first come, first serve basis determined by the date of original filing with the Department. The Federal acknowledgement [sic] project staff shall establish a priority register including those petitions already pending before the Department.

(d) The petitioner and other parties submitting comments on the petition shall be notified when the petition comes under active consideration. They shall also be notified who is the primary Bureau staff member reviewing the petition, his backup, and supervisor. Such notice shall also include the office address and telephone number of the primary staff member.

(e) A petitioning group may, at its option and upon written request, withdraw its petition prior to publication by the Assistant Secretary of his finding in the **FEDERAL REGISTER** and, may if it so desires, file an entirely new petition. Such petitioners shall not lose their priority date by withdrawing and resubmitting their petitions later, provided the time periods in paragraph (f) of this section shall begin upon active consideration of the resubmitted petition.

(f) Within 1 year after notifying the petitioner that active consideration of the petition has begun, the Assistant Secretary shall publish his proposed findings in the **FEDERAL REGISTER**. The Assistant Secretary may extend that period up to an additional 180 days upon a showing of due cause to the petitioner. In addition to the proposed findings, the Assistant Secretary shall prepare a report which shall summarize the evidence for the proposed decision. Copies of such report shall be available for the petitioner and other parties upon written request.

(g) Upon publication of the proposed findings, any individual or organization wishing to challenge the proposed findings shall have a 120-day response period to present factual or legal arguments and evidence to rebut the evidence relied upon.

(h) After consideration of the written arguments and evidence rebutting the proposed findings, the Assistant Secretary shall make a determination regarding the petitioner's status, a summary of which shall be published in the **FEDERAL REGISTER** within 60 days from the expiration of the response period. The determination will become effective in 60 days from publication unless earlier withdrawn pursuant to § 83.10.

(i) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies the criteria in § 83.7.

(j) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in § 83.7. In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall analyze and forward [sic] to the petitioner other options, if any, under which application for services and other benefits may be made.

#### § 83.10 Reconsideration and final action.

(a) The Assistant Secretary's decision shall be final for the Department unless the Secretary requests him to reconsider within 60 days of such publication. If the Secretary recommends reconsideration, the Assistant Secretary shall consult with the Secretary, review his initial determination, and issue a reconsidered decision within 60 days which shall be final and effective upon publication.

(b) The Secretary in his consideration of the Assistant Secretary's decision may review any information available to him, whether formally part of the record or not; where reliance is placed on information not of record, such information shall be identified as to source and nature, and inserted in the record.

(c) The Secretary may request reconsideration of any decision by the Assistant Secretary but shall request reconsideration of any decision, which in his opinion:

(1) Would be changed by significant new evidence which he has received subsequent to the publication of the decision; or

(2) A substantial portion of the evidence relied on was unreliable or was of little probative value; or

(3) The petitioner's or the Bureau's research appears inadequate or incomplete in some material respect.

(d) Any notice which by the terms of these regulations must be published in the **FEDERAL REGISTER**, shall also be mailed to the petitioner, the Governors and attorney generals of the States involved, and to other parties which have commented on the proposed findings.

#### **§ 83.11 Implementation of decisions.**

(a) Upon final determination that the petitioner is an Indian tribe, the tribe shall be eligible for services and benefits from the Federal Government available to other federally recognized tribes and entitled to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States as well as having the responsibilities and obligations of such tribes. Acknowledgment shall subject such Indian tribes to the same authority of Congress and the United States to which other federally acknowledged tribes are subject.

(b) While the newly recognized tribe shall be eligible for benefits and services, acknowledgment of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall become available upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly recognized tribe.

(c) Within 6 months after acknowledgment that the petitioner exists as an Indian tribe, the appropriate Area Office shall consult and develop in cooperation with the group, and forward to the assistant Secretary, a

determination of needs and a recommended budget required to serve the newly acknowledged tribe. The recommended budget will be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

## APPENDIX E

**Title 25, Code of Federal Regulations**  
**PART III - ANNUITY AND OTHER**  
**PER CAPITA PAYMENTS**

**Sec.**

- 111.1 Persons to share payments.
- 111.2 Enrolling non-full-blood children.
- 111.3 Payments by check.
- 111.4 Election of shareholders.
- 111.5 Future payments.

**AUTHORITY: 5 U.S.C. 301.**

**SOURCE:** 22 FR 10549, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 111.1 Persons to share payments.**

In making all annuity and other per capita payments, the funds shall be equally divided among the Indians entitled thereto share and share alike. The roll for such payments should be prepared on Form 5-322,<sup>1</sup> in strict alphabetical order by families of husband, wife, and unmarried dependent minor children. Unless otherwise instructed, (a) Indians of both sexes may be considered adults at the age of 18 years; (b) deceased enrollees may be carried on the rolls for one payment after death; (c) where final rolls have been prepared constituting the legal membership of the tribe, only Indians whose names appear thereon are entitled to share in future payments, after-born children being excluded and the shares of deceased enrollees paid to the heirs if determined or if not determined credited to the estate pending determination; and (d) the shares of competent Indians will be paid to them directly and the shares of incompetents and minors deposited for expenditure under the individual Indian money regulations.

**CROSS REFERENCES:** For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30 through 11.32C of this chapter. For individual Indian money regulations, see Part 115 of this chapter.

1. Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

### § 111.2 Enrolling non-full-blood children.

Where an Indian woman was married to a white man prior to June 7, 1897, and was at the time of her marriage a recognized member of the tribe even though she left it after marriage and lived away from the reservation, the children of such a marriage should be enrolled—and, also in the case of an Indian woman married to a white man subsequent to the above date but who still maintains her affiliation with the tribe and she and her children are recognized members thereof; however, where an Indian woman by marriage with a white man after June 7, 1897, has, in effect, withdrawn from the tribe and is no longer identified with it, her children should not be enrolled. In case of doubt all the facts should be submitted to the Bureau of Indian Affairs, Washington, D.C., for a decision.

### § 111.3 Payments by check.

All payments should be made by check. In making payments to competent Indians, each check should be drawn to the order of the enrollee and given or sent directly to him. Powers of attorney and orders given by an Indian to another person for his share in a payment will not be recognized. Superintendents will note in the "Remarks" column on the roll the date of birth of each new enrollee and the date of death of deceased annuitants.

### § 111.4 Election of shareholders.

An Indian holding equal rights in two or more tribes can share in payments to only one of them and will be required to elect with which tribe he wishes to be enrolled and to relinquish in writing his claims to payments to the other. In the case of a minor the election will be made by the parent or guardian.

**§ 111.5 Future payments.**

Indians who have received or applied for their pro rata shares of an interest-bearing tribal fund under the act of March 2, 1907 (34 Stat. 1221; 25 U.S.C. 119, 121), as amended by the act of May 18, 1916 (39 Stat. 128), will not be permitted to participate in future payments made from the accumulated interest.

## TIMBER INCOME BY FISCAL YEAR AND AREA

	TOTAL 1977-1982	1982	1981	1980	1979	1978	1977
BIA Total Timber Cut Including Tribal, Allotted & Governmental	524,231,802	43,126,777	75,546,488	89,919,453	119,350,108	105,740,137	90,548,839
BIA Tribal Timber Cut For Whole US	411,181,985	37,558,907	67,904,471	70,029,561	92,347,661	79,569,481	63,771,904
AREA TIMBER INCOME (TRIBAL ONLY)	TOTAL 1977-1982	1982	1981	1980	1979	1978	1977
Aberdeen	295,841	56,453	14,640	93,284	80,132	30,599	20,733
Albuquerque	5,167,528	1,244,212	1,500,726	499,074	159,846	934,416	829,249
Anadarko	5,786	no data submitted	5,786	-0-	-0-	not listed	not listed
Billings	19,123,381	1,264,968	1,838,439	2,446,362	4,338,385	5,214,250	4,020,977
Eastern	1,117,355	245,347	167,713	80,871	256,621	143,982	222,821
Juneau	3,697,899	256,191	307,079	2,440,231	28,448	-0-	665,950
Minneapolis	7,856,679	1,398,993	1,407,199	1,435,743	1,231,538	1,169,500	1,213,708
Muskogee	108,442	87,626	4,163	13,047	1,585	2,021	not listed
Navajo	22,083,260	2,158,832	3,967,732	2,257,201	4,607,967	5,036,245	4,055,283
Phoenix	33,073,998	4,002,402	6,001,173	3,442,649	7,426,713	6,316,123	6,884,938
Portland	292,730,093	26,158,021	49,988,980	50,419,427	67,270,781	55,591,584	43,301,300
Sacramento	25,921,723	685,862	2,700,841	6,901,667	6,945,645	5,130,761	3,556,947

Source: 1977-1982 U.S. Dept. of Interior, Bureau of Indian Affairs Annual Report, Division of Forestry Report No. 53-4S

## FORESTED TRUST RESERVATIONS AND AGENCIES HAVING JURISDICTION OVER TRUST ALLOTMENTS

**ANCSA Lands (Alaska)**  
**13 REGIONAL CORPORATIONS**  
**200 + VILLAGE CORPORATIONS**



### LEGEND

- AREA BOUNDARY
- FORESTED RESERVATIONS
- AREA OFFICES

1. Makah	37. Crow	73. Pendleton
2. Otoe	38. Northern Cheyenne	74. Pennsylvania
3. Quileute	39. Wind River	75. Iroquois
4. Hidatsa	40. Uteach and Duray	76. Osceola
5. Quinault	41. Nezperce	77. Minnesota
6. Nezperce	42. Fort Apache	78. Stockbridge
7. Chehalis	43. San Carlos	79. Mole Lake
8. Spokane Island	44. Nevada	80. Winnebago
9. Lower Elwha	45. Sioux	81. Forest County
10. Lummi	46. Ranch Navajo	82. Hammonville
11. Port Gamble	47. Arrows	83. Bay Mills
12. Skokomish	48. Lapwai	84. L'Anse
13. Port Madison	49. Idaho	85. Le De Plaines
14. Nisqually	50. San Lakeshore	86. Red River
15. Muckleshoot	51. Zia	87. Red Cliff
16. Tulalip	52. Jones	88. Grand Portage
17. Seminole	53. Jacobs	89. Le Coeur Ondine
18. Lower	54. Santa Clara	90. St. Croix
19. Coeur d'Alene	55. Pocatello	91. Fond Du Lac
20. Nez Perce	56. Tongue	92. Mille Lacs
21. Umatilla	57. Neosho	93. Sac and Fox
22. Yakima	58. Southern Ute	94. M'Hi Sioux
23. White	59. Pine Ridge	95. White Earth
24. Warm Springs	60. Sandhill	96. Red Lake
25. Fort Hall	61. Fort Totten	97. Leech Lake
26. Fort Belvoir	62. Turtle Mountain	98. Net Lake
27. Nez	63. Apsaroke Island	
28. Round Valley	64. San Juan Agency	
29. Yurok	65. Ancestral Agency	
30. Fort Klamath	66. Fort Verde Agency	
31. Shasta	67. Whitefish	
32. Shoshone	68. Table Rock	
33. Shoshone	69. Tolowa	
34. Shoshone	70. Clatsop	
35. Shoshone	71. Sisseton	
36. Fort Belknap	72. Clatsop	

**INDIANS ENROLLED BY TRIBES HAVING  
SECTION 407 TIMBER SALES<sup>a</sup>**

<u>Tribe</u>	<u>No.</u>
1. Makah	1,789
2. Ozette	0
3. Quileute	546
4. Hoh	101
5. Quinault - All Land Allotted	1,800
6. Shoalwater	101
7. Chehalis	377
8. Squaxin Island	290
9. Lower Elwha	403
10. Port Gamble	479
11. Skokomish	501
12. Port Madison	557 <sup>b</sup>
13. Nisqually	175
14. Muckleshoot	408
15. Tulalip	950
16. Swinomish	495
17. Lummi	1,225
18. Colville	6,240
19. Spokane	1,938
20. Kalispel	185
21. Kootenai	65
22. Coeur d'Alene	1,200
23. Nez Perce	2,560
24. Umatilla	1,342
25. Yakima	6,775
26. Siletz	1,550
27. Warm Springs	2,400
28. Fort Hall	3,100
29. Fort Bidwell	199
30. Hoopa	1,598
31. Round Valley	2,300
32. Tule River	549

<sup>a</sup> Source: Mitchell Bush (derived from report of Tribal Enrollment Services Branch for 1981 BIA budget).

<sup>b</sup> Estimate provided by Suquamish Tribe located at reservation.

<u>Tribe</u>	<u>No.</u>
33. Flathead	6,031
34. Blackfeet	12,033
35. Rocky Boy's	2,900
36. Fort Belknap	4,000
37. Crow	6,701
38. Northern Cheyenne	4,889
39. Wind River - Shoshone plus Arapahoe	5,695
40. Uintah and Ouray	1,720
41. Hualapai	1,133
42. Fort Apache - White Mountain Res.	7,700
43. San Carlos	8,500
44. Navajo	165,000
45. Zuni	6,999
46. Ramah Navajo	1,696
47. Acoma	3,586
48. Laguna	6,406
49. Isleta	3,224
50. San Ildefonso	520
51. Zia	650
52. Jemez	2,227
53. Jicarilla	2,308
54. Santa Clara	1,374
55. Picuris	245
56. Tesuque	312
57. Mescalero	2,465
58. Southern Ute	1,096
59. Pine Ridge	12,753
60. Rosebud	15,033
61. Fort Totten	2,187
62. Turtle Mountain	21,007
63. Annette Island	1,200 <sup>c</sup>
64. Southeast Agency	
65. Anchorage Agency	
66. Fairbanks Agency	
67. Winnebago	2,045

<sup>c</sup> Estimate by tribal counsel.

<u>Tribe</u>	<u>No.</u>
68. Tahlequah (Cherokee Nation) - 1906	43,512
69. Talihina (Choctaw)	28,022
70. Choctaw	3,790
71. Seminole	1,218
72. Cherokee	8,381
73. Penobscot	1,045
74. Passamaquoddy - Pleasant	1,244
Peter Dana	749
75. Isabella (Saginaw Chippewa Tribe)	780
76. Oneida	7,562
77. Monominee	6,182
78. Stockbridge	1,106
79. Mole Lake	769
80. Winnebago	3,174
81. Forest County	603
82. Hannahville	375
83. Bay Mills	803
84. L'Anse	2,089
85. Lac Du Flambeau	1,590
86. Bad River	2,817
87. Red Cliff	2,137
88. Grand Portage	724
89. Lac Courte Oreilles	807
90. St. Croix	444
91. Fond Du Lac	2,541
92. Mille Lac	1,937
93. Sac and Fox	975
94. MN Sioux	
Lower	268
Prairie	212
Shakopee	102
Upper & Prior Lake Combined	127
95. White Earth	19,045
96. Red Lake	6,027
97. Leech Lake	5,493
98. Nett Lake	1,637
<b>TOTAL ENROLLED INDIANS</b>	<b><u>514,120</u></b>

APPENDIX G  
LEGISLATIVE HISTORY  
INDIAN TIMBER—SALE

Senate Report (Interior and Insular Affairs Committee)  
No. 672, Nov. 27, 1963 [To accompany S.1565]

House Report (Interior and Insular Affairs Committee) No.  
1292, Mar. 25, 1963 [To accompany S.1565]

Cong. Record Vol. 109 (1963) (p. 23110)

Cong. Record Vol. 110 (1964) (p. 8376)

DATES OF CONSIDERATION AND PASSAGE

House Apr. 20, 1964

Senate Dec. 3, 1963

The House Report is set out.

House Report No. 1292

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1565) to amend the act of June 25, 1910 (36 Stat. 857; 25 U.S.C. 406, 407), with respect to the sale of Indian timber, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of S. 1565, introduced as the result of an executive communication from the Secretary of the Interior, is to amend in a number of respects two sections of the act of June 25, 1910, which deal with the sale of Indian timber and to establish guidelines for a timber harvesting program. Similar bills, H.R. 6287 and H.R. 4394, introduced by Representative Haley and Representative Olsen of Montana, were considered concurrently with the reported bill.

## NEED

One great need that this legislation will serve is that of modernizing timbering operations on Indian reservations. Under the 1910 law, sale of mature living and dead and down timber on tribal lands is permitted. This is not sufficient to meet present-day standards of timber harvesting in accordance with principles of sustained yield, or to permit the removal of immature trees of poor quality or undesirable species. It likewise does not cover occasional situations in which clear-cut timbering should be conducted so that land may be used for farming, recreational, or building purposes. Section 7 of the 1910 act, as amended, will overcome these problems by permitting flexibility in harvesting practices on unallotted lands on Indian reservations. The amended section also provides that revenues derived from timber sales shall be used for the benefit of tribal members rather than, as under present law, only those who live on the reservation concerned.

Amendment of section 8 of the 1910 act is needed to provide better methods than the law now provides for the sale and management of timber on Indian trust land. The amendments to the basic act which S. 1565 proposes cover such subjects as the charging of administrative expenses; representation of Indians who are minors or non compos mentis, who cannot be located, or whose ownership interest in a decedent's estate has not been determined; sale without the consent of the owner in emergency cases; sale upon request of the owner of a majority interest in lands which are held by more than one owner; and the effect of change in status from restricted to nonrestricted land. All of these will assist in overcoming deficiencies in the present law. In all events, the Secretary is instructed, by the terms of the bill, to give consideration not only to the state of the land and timber, but also to "the present and future needs of the owner and his heirs." In enacting S. 1565 the committee wishes it to be clearly understood modern means of reforestation practices as well as harvesting operations will be pursued in the implementation of the legislation.

## COST

No additional expenditure of Federal funds is anticipated by the enactment of S. 1565.

## EXECUTIVE COMMUNICATION

The communication from the Department of the Interior requesting introduction of S. 1565 follows:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 1, 1963.

Hon. JOHN W. McCORMACK,  
*Speaker of the House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: There is enclosed a draft of a proposed bill, to amend the act of June 25, 1910 (36 Stat. 857, 25 U.S.C. 406, 407), with respect to the sale of Indian timber. It is identical to H.R. 3529, 87th Congress, as it passed the House of Representatives, except for one editing change in section 8(d).

We recommend that the proposed bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

Sections 7 and 8 of the act of June 25, 1910, read as follows:

Sec. 7. That the mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct: *Provided*, That this section shall not apply to the States of Minnesota and Wisconsin.

"Sec. 8. That the timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior."

The bill makes the following changes in these two sections of the 1910 act:

1. The 1910 act permits the sale of "mature living and dead and down timber" on tribal lands. The amendment permits the sale of any timber from tribal lands "in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use."

The present language of the act is too restrictive, and does not permit harvesting of timber in accordance with present-day standards. Under sustained-yield management it is not always desirable to restrict cutting to mature timber. It is sometimes advisable to remove immature trees that are of poor quality or of undesirable species. It may also be good forest practice to remove immature trees of desirable species as a thinning operation. In isolated cases it may be desirable to clear cut a piece of tribal timberland for farming, for building sites, or for other purposes. By amending the act to permit sales in accordance with the principles of sustained yield, or for the purpose of converting the land to a more desirable use, the interests of the Indian owners will be better served.

2. Section 7 of the 1910 act provides that the proceeds of tribal timber sales shall be used for the benefit of the Indians of the reservation. A later act of February 14, 1920, as amended (47 Stat. 1417, 25 U.S.C. 413), permits the Secretary to deduct from the proceeds of sale reasonable fees to cover the administrative costs of sale.

The proposed amendment of section 7 of the 1910 act incorporates a reference to this later act. This is a technical amendment and does not change the present law.

3. Another amendment to section 7 of the 1910 act changes the reference to "Indians of the reservation" to "Indians who are members of the tribe or tribes concerned." This change provides a better reference to the Indians entitled to share in the financial benefits flowing from such timber sales.

4. The 1910 act provides that the authority to sell tribal timber does not apply in Minnesota and Wisconsin. The

amendment omits this limitation because it has no relevance to present-day circumstances.

5. Section 8 of the 1910 act contains no standards to guide the Secretary when determining whether timber should be sold from allotted land. The amendment provides these standards in a form that should help allay disputes and avoid misunderstanding.

6. With respect to sales of timber from allotted land, the 1910 act of course makes no reference to the later 1920 act with respect to deduction for administrative expenses. The amendment indicates a congressional intention that the 1920 act shall apply unless its application would violate a treaty or the fifth amendment. This will in our opinion maintain the status quo as we understand the law today.

7. The 1910 act permits a sale of timber from allotted land to be made only when the signatures of all the owners can be obtained. When there are many owners of undivided interests, it is sometimes impossible to comply with this requirement, and compliance is frequently more costly than warranted. Very often, one or more owners cannot be located. Frequently too, a minority owner would receive but a few cents from a proposed sale, and he will not take the trouble to submit his written consent.

The bill amends this provision by permitting the Secretary to sell the timber upon the request of the owners of a majority interest in the land.

8. The 1910 act does not authorize the Secretary, when selling the restricted interests in timber on an allotment, to include in the contract of sale the undivided interests in the timber that are held in unrestricted ownership. This presents a serious problem of administration.

The amendment permits such unrestricted interests to be included in the sale with the consent of the owner. This will allow the Secretary to administer as a unit the sale of timber from a single allotment where some of the undivided ownership interests are restricted and some are unrestricted.

9. The 1910 act does not contain any provision for the execution of timber sale contracts when the owner is a minor, non compos mentis, cannot be found, or fails to respond to inquiries, or when the title is in heirs or devisees who have not been determined because of incomplete probate proceedings. The bill permits the Secretary to act on behalf of such persons.

10. The 1910 act does not permit timber sales to be made under emergency conditions without the consent of the owners, when the sale is necessary to prevent a loss of value. Salvage sales following a fire, windthrow, or other calamity must be made quickly. The bill provides this authority.

11. The 1910 act is silent with respect to the effect, on an existing contract of sale, of a change of an undivided interest from a restricted to an unrestricted status. Such changes occur by inheritance, the issuance of fee patents, and supervised land sales. The bill provides that such changes in status will not affect existing contracts.

The Bureau of the Budget has advised that there is no objection to the presentation of this draft bill from the standpoint of the administration's program.

Sincerely yours,

JOHN A. CARVER, JR.  
*Assistant Secretary of the Interior*

*Hearings On H.R. 6287 And H.R. 4394 Before The  
Subcomm. On Indian Affairs Of The House Comm. On  
Interior And Insular Affairs, 88th Cong., 1st Sess. 4-5,  
17 (June 20, 1963)*

Mr. Edmondson. Mr. Holmes and Mr. Sigler would you give us your views with regard to these bills?

**STATEMENT OF GRAHAM HOLMES, ASSISTANT COMMISSIONER FOR LEGISLATION, BUREAU OF INDIAN AFFAIRS, ACCCOMPANIED BY LEWIS A. SIGLER, ASSISTANT LEGISLATIVE COUNSEL.**

Mr. Holmes. Mr. Chairman, H.R. 6287 is a departmental bill and passed the 87th Congress for all practical purposes in the same language it now contains here as 6237. The only change was a correction of what appeared to be a misprint, I believe. We have recommended that the bill be enacted.

The bills generally amend the Act of June 25, 1910. The 1910 Act provides in section 7, provides, "That the mature, living or dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior." That is the general authority in section 7.

Before 1910 there was no statutory authority for selling Indian timber. This we believe is too restrictive. Often times it is advantageous to sell timber that could not be classified as mature, living or dead and down.

Our amendment broadens the language somewhat and provides for the harvesting of timber on tribal lands under a sustained yield cutting. Now we think sustained yield cutting is a term that is understandable and has a meaning in the industry and is reasonably easy to carry out.

There is also provision, however, in this for clear cutting and for determining the highest and best use of the land on a sustained yield basis. So while it does provide for a sustained yield cutting, the method of use may be changed under the suggested amendment.

Now this applies to tribal lands.

Mr. Saylor. I cannot hear you. It applies to what?

Mr. Holmes. Tribal lands.

In section 8, I believe, of the 1910 Act there is a provision that the allottee may sell his timber subject to the approval of the Secretary of the Interior. This is a very broad statement, or very broad authority, and has caused through the years some difficulty. We feel, however, that the matter has now pretty well resolved itself down to the theory that the allotted lands should be managed for the benefit of the allottee, but that there should also be considered the future in the management of the lands.

There is always the question of whether or not timber should be clear cut or completely used up or exhausted for the purposes of the present allottee, or whether the management plan should be carried out to the best interests of the allottee and for future generations.

\* \* \* \* \*

(Page 17)

\* \* \* \* \*

Mr. Saylor. Mr. Chairman?

Mr. Edmondson. Mr. Saylor.

Mr. Saylor. I just want to say to the witnesses that your testimony would be all right if you did not have in section 7 the provision that you have on lines 7 and 8: "or in order to convert the land to a more desirable use".

In other words, you have in here two conditions; number one, you want the authority to manage the timber in accordnce [sic] with the principles of sustained yield. I think this is a proper grant of authority. I think this should be given to you. And if you read that provision with regard to section 8 and subsection (e), then there is no argument. But if you once be given the authority to convert the land to a more desirable use and then read section 8(e), "timber may be sold for other causes", you might just get into the most liberal interpretation that ever came down the pike.

Mr. Sigler. Congressman Saylor, section 7 relates to tribal land, not to allotted land. And the phrase you refer to, "in order to convert the land to a more desirable use" is tribal land. You would also get the consent of the tribe before selling tribal land.

*Hearings On H.R. 6287, H.R. 4394 And S. 1565 Before  
The Subcomm. On Indian Affairs Of The House Comm.  
On Interior And Insular Affairs, 88th Cong., 2d Sess. 2-4  
(March 6, 1964)*

. . . to harvest this timber and apply the proceeds to the benefit of the Indian tribe.

Mr. Holmes. Would you like to further enlighten us on this matter?

Mr. Graham E. Holmes (Bureau of Indian Affairs). Yes, sir, I think that statement covers it.

Under the 1910 Act, as we pointed out, the 1910 Act provides that "the mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation".

It is not always best to wait until timber becomes mature or dead and down. Sometimes in the management of a forest it is beneficial to sell other timber. This has oftentimes worked to prevent us from doing what we think, and the Indians think, or some of the Indians think, anyway, is the best in management. We have done our best under the present law to do the best we could to manage the timber.

We think the new Act removes any doubt and provides for a sustained yield type of timber management. We have been doing this sustained yield timber management the best we could for a long time. Over a period of years we have built up an understanding of this with the Indian tribe and with the people that purchase our timber. Everybody understands what we are talking about when we say we are managing on a sustained yield basis.

Having done that then, we think that the best way to manage the timber is to have an Act provide for that very thing. That is one of the things that we have provided for.

The present law, the 1910 Act, says, "that the timber on any Indian allotment held under a trust or other patent

containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior, and the proceed thereof shall be paid to the allottee or disposed of for his benefit".

That section as to allotted land is much broader than the section as to tribal land. The new Act makes them the same.

The timber is oftentimes checkerboarded. The tribal land and the allotted land are in the same area and the same unit and should be cut in the same manner and at the same time. This Act takes care of that, we think.

We have a slight technical correction in who is a member of the tribe and who is entitled to share. The present law says, "Indians of the reservation". Today that really does not assign anybody. Actually members of the tribe share in the proceeds of the sale of tribal property. So we propose to change the statute. And that is what we have been doing all the time anyway. We propose to change the statute to read, "Indians who are members of the tribe." So when we sell the tribe's timber and go to divide up the money we will give to the members of the tribe and not Indians of the reservation.

We have been considering them to mean the same thing anyway. We cannot give money to anybody except members of the tribe anyway, but this clarifies the law, keeps down arguments and troubles that sometimes happen over that. Oftentimes when an Indian dies his allotment is inherited by his heirs. Sometimes one of these heirs is non-Indian. The lawyers have held that we cannot handle this inherited undivided interest in this, we cannot collect the money, and it embarrasses the management of this whole piece of land because there a little fractional interest in there we seem not to be able to get at.

There is no authority for us to furnish this service, even with his consent, to a non-Indian. While this may seem to be a little technical interpretation of the law, it is nevertheless causing trouble. While we are changing the statute generally, we think that ought to be changed to give us authority on the authorization of the Non-Indian owner to give that

undivided interest in the lease, collect the money, and pay out to the non-Indian holder of the fractionated interest in the allotment. We did that for a long time, and then the lawyers got skittish about it and the auditors got to questioning it. So we have cured that thing in this Act.

Mr. Haley. Mr. Holmes, is S. 1565 identical to H.R. 6287 and \_\_ \_\_

Mr. Holmes. Yes, sir, pretty much. It is changed a little bit.

Mr. Witmer. Mr. Chairman, they are close but not identical.

*Hearings On S. 1565 Before The House Comm. On  
Interior And Insular Affairs, 88th Cong., 2d Sess. 8-12  
(March 11, 1964)*

The Chairman. Unless there is an objection, the report will so state.

Mr. Saylor. Will the gentleman yield to me?

Mr. Haley. Yes.

Mr. Saylor. I am in sympathy with the purpose of the bill as the gentleman from Florida has indicated it, but that is not what the language says.

In other words, the purpose, as confirmed by the questions from the gentleman from North Carolina, Mr. Taylor, is that this is to allow the Secretary of the Interior to use modern methods in the harvesting of timber on Indian reservations. But it goes farther and authorizes the Secretary of the Interior to sell timber in order to convert the land to a more desirable use. This is not a timbering operation.

And then we change the basic principle that has been in the law since 1910 that only those Indians that remain on the reservation are entitled to participate in the funds received from timber. This will allow the Secretary of the Interior to use the money for Indians wherever they are. I think it is a very far-reaching bill. I do not know whether this is what the committee intended, but it sure is what the language says. This is only in the first section that I have gotten through.

Mr. Haley. May I say to the gentleman from Pennsylvania, as I stated, this does change the law in several ways. I also might call to the gentleman's attention the fact that the Secretary is authorized to represent minors, those non compus [sic] mentis, Indians who have an estate that nobody can locate an heirs [sic] for, and so forth. It does go beyond the present law. I stated that, I think, very clearly at the beginning.

Mr. Saylor. If it is the desire of the committee to change the basic law and allow the moneys to be used by the

Secretary for all of the members of the tribe, I want the committee to know what is what we are doing. This is one of the things members of tribes have come and talked to me about, their timber holdings, and they are principally the people who stated [sic] on the reservation. They have no objection whatever to using modern methods of harvesting their timber, but they want to know why, if they are going to use modern methods, the funds derived should be now put to other purposes than they have been for the last fifty years.

The Chairman. Will the gentleman from Florida yield to me?

Mr. Haley. Yes.

The Chairman. Mr. Witmer, is that the interpretation you put upon the amendment to the existing statute?

Mr. Witmer. My understanding of it is this, Mr. Chairman: unde (sic) the 1910 Act, as Mr. Saylor said, the monies were to be used for the benefit of the Indians living on the reservation. In the past 50 years a good many Indians have moved off the reservation and, as this committee knows, various other sources of income which some tribes have are available to all enrolled members of the tribe regardless of where they live. This amendment, in effect, brings the timber sale Act in line with that in that respect, provides—and the Department points this out very clearly in its report on the bill—that the monies will be available for Indians who are members of the tribe or tribes concerned. So Mr. Saylor's statement is correct.

The Chairman. If the gentleman will yield further, but his statement about the general rule at the present time is applicable only to the forest income. His statement as to the general rule for all tribal accounts would not go as far as his implication.

Mr. Witmer. No. We had, just to take an illustration, the judgment funds continually coming [sic] before this committee, where a roll has to be made of all Indians regardless of whether they are living on the reservation or

not, and this treats the timber assets as being in the same category with these others.

Mr. Saylor. Section 8 of the bill, Mr. Witmer, deals then with private holdings.

Mr. Witmer. Yes, this deals with private holdings which are held by the Government in trust or by Indians under restriction.

Mr. Saylor. For individual Indians?

Mr. Witmer. For individual Indians, yes, and what you and I have been talking about goes to section 8. This is private property; it is not tribal property.

Mr. Saylor. I just wanted to call to the attention of the committee that, as far as the private property is concerned, I have no objection to this section at all, but I want the members of the committee to know what is happening as far as the change in policy that we are adopting here if this bill passes.

The Chairman. Dr. Taylor.

Dr. Taylor. Mr. Chairman, the language that has been incorporated into the amendment of this bill is comparable to the language that is included in the bill—in a bill that we have pending in our committee, S. 1049, known as the Indian Heirship Land Bill. That amendment provides that these revenues from the sale of various items from a reservation shall be used for the benefit of people off the reservation as well as people on the reservation, and that amendment was worked out between the Senate Interior Committee and the Bureau of Indian Affairs.

For the most part—I will not say all by any means—but for the most part the Indian tribes have, with some degree of reluctance, agreed to that amendment.

The Chairman. When you say "some degree of reluctance" you are talking about those who still remain upon the reservation?

Dr. Taylor. Yes.

The Chairman. Of course, what we are doing here is removing a penalty against those Indians who see fit to leave the reservation. Is that not right?

Dr. Taylor. That is right, sir.

The Chairman. Is there any further discussion?

Are there any amendments?

The report on this bill should be definite as to what we have done in this legislation.

Unless there is an objection, S. 1565 will be reported favorably.

Hearing no objection, it is so ordered, and the gentleman from Florida is designated to prepare and file the necessary report.

Other bills, H.R. 6287 and H.R. 4394, will be tabled, with proper reference being made in the report to the sponsorship of the legislation.

(Whereupon, the committee moved to other business.)

May 4, 1983

Benjamin J. Guthrie, Clerk  
U.S. House of Representatives  
H105 U.S. Capitol  
Washington, D.C. 20510

Sir:

Enclosed herewith is a request for copies of certain pages of unedited transcript of the Committee on Interior and Insular Affairs for use in litigation before the U.S. Court of Claims.

After reviewing the material requested, I believe it appropriate to make it available for the stated purpose. Nothing contained in the material would cause any embarrassment to any Member or former Member of Congress. Instead it will help clarify legislative intent at the time of consideration of existing provisions of law.

By unanimous Committee action this date, the executive session material was by resolution (copy enclosed) opened to public review. Under current Committee rules, this material would normally have been open for review, but the rules prevailing on March 6, 1964 provided that all subcommittee markup sessions be conducted in executive session. Nothing contained in the requested material involves any matter that needs to remain confidential.

Since this material is needed urgently, it would be appreciated if you would expedite the certification of these pages as true and accurate copies of the materials contained in the files of S. 1565 and H.R. 6287 of the 88th Congress.

Sincerely,

MORRIS K. UDALL  
Chairman

Enclosures.

## COMMITTEE RESOLUTION

BE IT RESOLVED by the Committee on Interior and Insular Affairs of the House of Representatives that the transcript of the Executive Session of the Subcommittee on Indian Affairs to consider legislation to amend the Act of June 25, 1910, with respect to the sale of Indian timber (dated March 6, 1964) be deemed, and is hereby declared to be a record open for review by the general public.

*Explanation*

Prior to the adoption of the Rules of the Committee for the 93d Congress, subcommittee markup sessions were customarily held in executive session. Accordingly, the markup involved in this resolution was closed to the public.

The meeting in question concerns the 1964 amendment to the statute governing the procedure for Interior Department sales of timber from unallotted Indian reservation lands. Certain comments during that meeting help to explain the legislative intent of a particular provision that is presently being litigated and would be useful in helping to resolve a long-standing legal dispute pending in the Court of Claims. Unless the Committee agrees to "open" this transcript for public review, it could not be made available to the Court for consideration in its deliberation.

While the Committee has not been confronted with this situation before, this type of a resolution is not unprecedented. In 1982 the Committees on Government Operations and Intelligence voted to make an executive session hearing on the National Security Act of 1947 a public record.

**Benjamin J. Guthrie**  
Clerk

**W. Raymond Colley**  
Deputy Clerk

**Office of the Clerk**

**U.S. House of Representatives**

**Washington, D.C. 20515**

I, Benjamin J. Guthrie, Clerk of the United States House of Representatives, do hereby certify that the attached copies of pages 4-5 and 17 of the June 20, 1963 hearing, pages 2-4 of the March 6, 1964 hearing before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs and pages 8-12 of the March 11, 1964 hearing before the Committee on Interior and Insular Affairs are true and correct copies of hearing transcripts of the House Committee on Interior and Insular Affairs.

In witness whereof, I hereby unto affix my name and the Seal of the House of Representatives, in the City of Washington, District of Columbia, this Fourth day of May, Anno Domini one thousand and nine hundred and eighty-three.

(SEAL)

/s/

Benjamin J. Guthrie, Clerk

**AFFIDAVIT OF GRAHAM E. HOLMES**

STATE OF NEW MEXICO )  
COUNTY OF DONA ANA )

Graham E. Holmes, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney working in the Accounting and Finance Department of New Mexico State University. My mailing address is P.O. Box 3146, University Park Branch, Las Cruces, New Mexico 88003.

2. For many years I was employed as an attorney in various capacities for the Bureau of Indian Affairs, Department of Interior. I worked as a field attorney in Oklahoma, became Area Director in Window Rock, Arizona, worked as Assistant Solicitor in the Indian Affairs Division of the Office of Solicitor, Department of Interior, and, for three years, was Assistant Commissioner of Indian Affairs for Legislation. During my tenure as Assistant Commissioner of Indian Affairs I frequently drafted legislation and testified in support of legislation desired by the Department of the Interior.

3. While I was Assistant Commissioner of Indian Affairs, I worked on the legislation proposed to amend the Act of June 25, 1910, 36 Stat. 857, 25 U.S.C. §§ 406, 407, with respect to the sale of Indian timber. In fact, I probably drafted the bill, introduced as S. 1565, which was ultimately enacted as Public Law 88-301 on April 30, 1964. That bill included provisions requiring sustained yield management, allowed imposition of administrative fees, and clarified the language concerning Indians who were beneficiaries of the sale of timber from unallotted lands.

4. On March 6, 1964, I participated in hearings before the Subcommittee on Indian Affairs of the House of Representatives' Committee on Interior and Insular Affairs, concerning S. 1565. I specifically discussed with the Subcommittee the language concerning Indian beneficiaries of sales of unallotted timber to be sure they understood that under both the 1910 Act and the proposed amendments the only eligible beneficiaries were tribal members. After reviewing notes on that hearing to refresh my memory, I can say that I testified to the Committee that the Interior

Department proposed a slight technical correction in who was entitled to share proceeds of Section 407 sales. The 1910 Act said "Indians of the reservation." Actually, only members of the tribe shared in the proceeds of the sale of tribal property. And that is how the Interior Department had been interpreting the section all the time anyway. We proposed to change the statute to read "Indians who are members of the tribe." So when we sold the tribe's timber and went to divide up the money we would give to the members of the tribe and not merely tribal members on the reservation. We had been considering the statutory reference to Indians of the Reservation to mean tribal members anyway, and could not give money to anybody except members of the tribe. The Interior Department felt the correction would clarify the law, and keep down arguments and troubles that sometimes had developed over that. This issue also appears to be addressed in the House and Senate Reports on S.1565, which state, "The amended section also provides that revenues derived from timber sales shall be used for the benefit of tribal members rather than, as under present law, only those who live on the reservation concerned." My testimony and other aspects of the hearings can be verified from the records of the Committee on Interior and Insular Affairs, since these hearings were transcribed.

5. To the best of my knowledge, the Bureau of Indian Affairs had always limited distributions of proceeds of sales from unallotted reservation timber to tribal members. In fact, there was no other way to do it. This procedure generally created no trouble, although in a few instances, for example, at the Colorado River Reservation, specific legislation became necessary. Of course, entitlement to Bureau of Indian Affairs' services, paid for with government funds, is quite different. Any Indian on a reservation may be eligible for hospitalization and educational benefits. However, so far as I am aware, only enrolled members of tribes could share in

distributions of tribal assets, such as timber proceeds of unallotted reservation lands.

/s/

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GRAHAM E. HOLMES  
SUBSCRIBED AND SWORN TO  
before me this 3rd day of May, 1983.

/s/

(SEAL)

---

MARY APODACA  
NOTARY PUBLIC-NEW MEXICO  
NOTARY BOND FILED WITH  
SECRETARY OF STATE

My Commission Expires 1-4-86

## APPENDIX H

## Title 25, Code of Federal Regulations

## PART 163 - GENERAL FOREST REGULATIONS

Sec.

163.1 Definitions.

163.2 Scope.

163.3 Objectives.

163.4 Sustained-yield management.

163.5 Cutting restrictions.

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163.15 Payments for timber.

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163.17 Time for cutting timber.

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163.19 Timber cutting permits.

163.20 Free-use cutting without permits.

163.21 Fire protective measures.

163.22 Trespass.

163.23 Appeals under timber contracts.

AUTHORITY: Secs. 7, 8, 36 Stat. 857, 25 U.S.C. 406, 407; and sec. 6, 48 Stat. 986, 25 U.S.C. 466; 47 Stat. 1417, 25 U.S.C. 413. Sec. 141.23 issued under 5 U.S.C. 301, 25 U.S.C. 2, unless otherwise noted.

CROSS REFERENCES: For rights-of-way, see Part 169 of this chapter. For sale of forest products, Red Lake Indian Reservation, Minnesota, see Part 165 of this chapter. For sale of lumber and other forest products produced by Indian enterprises from other reservations, see Part 164 of this chapter. For wilderness and roadless areas, see Part 265 of this chapter. For law and order, see Part 11 of this chapter.

### § 163.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Indian forest lands" means lands held in trust by the United States for Indian tribes or individual Indians or owned by such tribes or individuals subject to restrictions against alienation, that are considered to be chiefly valuable for the production of forest crops, or on which it is considered that a forest cover should be maintained in order to protect watershed or other values. A formal inspection and land classification action is not required before applying the provisions of this Part 163 to the management of any particular tract of land.

(c) "Stumpage value" means the value of uncut timber as it stands in the woods.

(d) "Stumpage rate" means the stumpage value per thousand board feet or other unit of measure.

[24 FR 7870, Sept. 30, 1959, as amended at 27 FR 12929, Dec. 29, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 163.2 Scope.

The regulations in this part are applicable to all Indian forest lands except as this part may be superseded by special legislation.

[24 FR 7870, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 163.3 Objectives.

(a) The following objectives are to be sought in the management of unallotted Indian forest lands in accordance with the principles of sustained yield:

(1) The preservation of such lands in a perpetually productive state by providing effective protection, by applying sound silvicultural and economic principles to the

harvesting of the timber, and by making adequate provision for new forest growth as the timber is removed.

(2) The regulation of the cut in a manner which will insure method and order in harvesting the tree capital, so as to make possible continuous production and a perpetual forest business.

(3) The development of Indian forests by the Indian people for the purpose of promoting self-sustaining communities, to the end that the Indians may receive from their own property not only the stumpage value, but also the benefit of whatever profit it is capable of yielding and whatever labor the Indians are qualified to perform.

(4) The sale of Indian timber in open competitive markets in accordance with good business practices on reservations where the volume that should be harvested annually is in excess of that which is being developed by the Indians.

(5) The preservation of the forest in its natural state wherever it is considered, and the authorized Indian representatives agree, that the recreational or aesthetic value of the forest to the Indians exceeds its value for the production of forest products.

(6) The management of the forest in such a manner as to retain its beneficial effects in regulating water runoff and minimizing erosion.

(7) The preservation and development of grazing, wildlife, and other values of the forest to the extent that such action is in the best interest of the Indians.

(b) Similar objectives are sought in the management of allotted Indian forest lands, but, in addition, the sales of timber shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things:

(1) The state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs.

(2) The highest and best use of the land, including the advisability of devoting it to other uses for the benefit of the owner and his heirs.

(3) The present and future financial needs of the owner and his heirs.

[29 FR 14740, Oct. 29, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### **§ 163.4 Sustained-yield management.**

In accordance with the objectives set forth in § 163.3, the harvest of timber from Indian forest lands will not be authorized until there have been prescribed practical methods of cutting, based on sound silvicultural principles. Cutting schedules shall be directed toward the salvage of timber that is deteriorating as a result of fire damage, insect infestation, disease, over-maturity or other cause; and toward achieving an approximate balance between maximum net growth and harvest during each cutting cycle. For all Indian reservations of major importance from an industrial forestry standpoint, management plans for the forest resource shall be prepared by the Bureau of Indian Affairs, and revised as needed. The plans shall contain a statement of the manner in which the policies of the Bureau of Indian Affairs are to be applied on the forest, with a definite plan of silvicultural management and a program of action, including a cutting schedule, for a specified period in the future.

[24 FR 7878, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### **§ 163.5 Cutting restrictions.**

Clearcutting of large contiguous areas will be permitted only on lands that, when cleared, will be devoted to a more beneficial use than the growing of timber crops; but this restriction shall not prohibit clearcutting, by staggered settings or otherwise, when it is silviculturally good practice to harvest a particular stand of timber by such methods, or

when it is not practicable to harvest such timber stand by methods other than clearcutting.

[24 FR 7870, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.6 Indian operations.**

Subject to approval by the Secretary, the following actions may be taken:

(a) Indian tribe logging or sawmill enterprises may be initiated and organized with the consent of the authorized tribal representatives.

(b) Such enterprises which do not operate under the provisions of Part 164 of this chapter shall enter into formal agreements with tribal representatives for the use of tribal timber, and with the individual Indian owners for allotted timber.

(c) Such enterprises may contract for the purchase of Indian-owned timber with the consent of the tribal representatives or the individual owners at stumpage rates established by the Secretary.

(d) Such enterprises may negotiate for the purchase of non-Indian owned timber.

(e) Performance bonds need not be required in connection with the use of timber by such enterprises.

(f) Payment for tribal timber cut by such enterprises may be authorized by methods other than those in § 163.15.

(g) Authorized officers of tribal enterprises, operating under approved agreements for the use of tribal or allotted timber pursuant to this section, may sell the forest products produced in accordance with generally accepted trade practices without compliance with section 3709 of the Revised Statutes.

[27 FR 12929, Dec. 29, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.7 Timber sales from unallotted and allotted lands.**

(a) On reservations where the volume of timber available for cutting is in excess of that which is being developed by the Indians, open market sales of Indian timber will be authorized: *Provided*, That consent is given by the authorized representative of the tribe for tribal timber and by the owners of a majority Indian interest in trust or restricted timber on allotted lands. The consent of the Secretary is required in all cases.

(b) The Secretary may sell the timber on any Indian land held under a trust or other patent containing restrictions on alienations without the consent of the owners when in his judgment such action is necessary to prevent loss of values resulting from fire, insects, disease, windthrow, or other catastrophes.

(c) Unless otherwise authorized by the Secretary, sales from unallotted lands, allotted lands, or a combination of these two ownerships having a stumpage value exceeding \$2,500 will not be approved until an examination of the timber to be sold has been made by a qualified forest officer and a report setting forth all pertinent information has been submitted to the officer authorized to approve the contract as provided in § 163.13. In all such sales of timber exceeding \$2,500 in value, the timber shall be appraised and sold at not less than its appraised value.

[38 FR 24638, Sept. 10, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.8 Advertisement of sales.**

Except as provided in §§ 163.6, 163.9, and 163.19, sales of timber shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the contract. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian timber to members of the tribe, or may grant to members of the tribe who submitted bids the right to meet

the higher bid of a non-Indian. If the estimated stumpage value of the timber offered does not exceed \$1,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds \$1,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the timber is situated. If the estimated stumpage value does not exceed \$10,000, the advertisement shall be for not less than 15 days; if the estimated stumpage value exceeds \$10,000 but not \$100,000, for not less than 30 days; and if the estimated stumpage value exceeds \$100,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, beetle attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed periods.

(c) If no contract is executed after such advertisement, the approving officer may, within 1 year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such timber in the open market upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

[24 FR 7870, Sept. 30, 1959, as amended at 27 FR 12929, Dec. 29, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

### **§ 163.9 Timber sales without advertisement.**

Sales of timber may be made without advertisement with the consent of the authorized representative of the tribe for tribal timber or with the consent of the owners of a majority Indian interest in trust or restricted timber on allotted lands, and the approval of the Secretary:

(a) To Indians or non-Indians when the timber is to be cut in conjunction with the granting of a right-of-way or authorized occupancy, or must be cut to protect the forest from injury, or if it is impractical to secure competition by formal advertising procedures, or when otherwise specifically authorized by statutes or regulations; or

(b) To Indians who are members of the tribe for stumpage value not exceeding \$10,000. Such contracts shall not be made for a longer term than 2 years. The stumpage rates in connection with such sales shall be established by the approving officer after due appraisal procedure. Timber contract forms executed under authority hereof shall be those stipulated for the sale of timber under § 163.12, and shall carry the bond requirement stipulated in § 163.14. No more than one such sale without advertisement may be made to any person or operating group of persons in any 1 calendar year. In the case of each negotiated transaction the approving officer shall establish a documented record of the transaction, including a written determination and finding that the transaction is of a type or class allowing the negotiation procedures or warranting departure from the procedures provided in § 163.8; the extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and a statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

[38 FR 24638, Sept. 10, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### **§ 163.10 Deposit with bid.**

(a) A deposit shall be made with each proposal for the purchase of either allotted or unallotted Indian timber. Such deposits shall be at least 20 percent if the appraised stumpage value is less than \$10,000; at least 10 percent if the appraised stumpage value is between \$10,000 and \$100,000, but in any event not less than \$2,000; at least 5 percent if the appraised stumpage value is between \$100,000 and \$250,000, but in any event not less than \$10,000; and at least 3 percent if the appraised stumpage value exceeds \$250,000, but in any event not less than \$12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, or postal money order, drawn payable to the order of the Bureau of Indian Affairs, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit written requests to have their bids considered for acceptance, will be retained pending acceptance or rejection of the bids. All other deposits will be returned promptly following the opening and posting of bids.

(d) The deposit of the successful bidder will be retained as liquidated damages if the bidder does not execute the contract, and furnish the performance bond required by § 163.14, within the time stipulated in the advertisement of timber sale.

[24 FR 7871, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.11 Acceptance and rejection of bids.**

(a) Applicants or bidders may be individuals, associations of individuals, or corporations. In ordinary circumstances the high bid received in connection with any advertisement issued under authority of this part shall be accepted. However, the approving officer, having set forth his reasons in writing shall have the right to reject the high bid:

(1) If he considers the high bidder to be unqualified to fulfill the contractual requirement of the advertisement, or

(2) If he has reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids, or

(2) Acceptance of the offer of another bidder who, at the time of opening of bids, makes formal request that his bid be so considered.

(c) The officer authorized to accept the bid is also authorized in his discretion to waive minor technical defects in advertisements and proposals.

[24 FR 7871, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.12 Contracts required.**

Except as provided in § 163.19(c), in sales of timber with an appraised stumpage value exceeding \$2,500 the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary. The approved forms provide flexibility to meet variable conditions, but essential departures from the fundamental requirements of such contracts shall be made only with the approval of the Secretary. Unless otherwise directed, the contracts shall require that the proceeds be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Contracts may be extended, modified, or assigned subject to approval of the approving officer, and may be terminated by the approving officer upon completion.

[38 FR 24639, Sept. 10, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.13 Execution and approval of contracts.**

(a) *Contracts for the sale of tribal timber.* All contracts for the sale of tribal timber shall be executed by the authorized representative of the tribe or tribal corporation. Contracts to be valid must be approved by the Secretary. There shall be included with the contract an affidavit executed by the appropriate officer of the tribe or tribal corporation setting forth the resolution or other authority of the governing body of the tribe or tribal corporation authorizing the sale.

(b) *Contracts for the sale of allotted timber.* Contracts for the sale of allotted timber shall be executed by the Indian owners or the Secretary acting pursuant to a power of attorney from the Indian owner, subject to conditions set forth in § 163.13(b) (1), (2), and (3). Contracts to be valid must be approved by the Secretary.

(1) The Secretary shall execute contracts on behalf of minors and Indian owners who are incompetent by reason of mental incapacity after consultation with any legally appointed guardian.

(2) The Secretary shall execute contracts for those persons whose ownership in a decedent's estate has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary shall include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to Part 163, and perform any functions required of him by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deductions as service fees from such payments of sums in lieu of administrative expenses.

[29 FR 14741, Oct. 29, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.14 Bonds required.**

Performance bonds will be required in connection with all sales of Indian timber, except they may or may not be required, as determined by the approving officer, in connection with the use of timber by tribal enterprises pursuant to § 163.6, or in timber cutting permits issued pursuant to § 163.19. In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed \$10,000 the bond shall be approximately 20 percent of the estimated stumpage value. In sales in which the estimated stumpage value exceeds \$10,000 but is not over \$100,000, the bond shall be approximately 15 percent of the estimated stumpage value but not less than \$2,000; in sales in which the estimated stumpage value exceeds \$100,000 but is not over \$250,000, the bond shall be approximately 10 percent of the estimated stumpage value but not less than \$15,000; and in sales in which the estimated stumpage value exceeds \$250,000, the bond shall be approximately 5 percent of the estimated stumpage value but not less than \$25,000. Bonds may be in the form of a corporate surety bond by an acceptable surety company; or cash bond designating the

approving officer to act under a power of attorney; or negotiable United States Government bonds supported by appropriate power of attorney and performance bonds.

[27 FR 12929, Dec. 29, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.15 Payments for timber.**

The basis of volume determination for timber sold shall be the Scribner Decimal C, International  $\frac{1}{4}$  inch, or International Decimal  $\frac{1}{4}$  inch log rules, cubic volume, weight, or such other form of measurement as the Secretary shall designate for each sale. Payment for timber will be required in advance of cutting pursuant to § 163.16, except for Indian enterprises pursuant to § 163.6. Each advance deposit shall be at least 10 percent of the value of the minimum volume of timber required to be cut annually, figured at the appraised stumpage rates: *Provided*, That the approving officer may reduce the size of the last advance deposit before the completion of the sale or before periods of approximately 3 months or longer during which no timber cutting is anticipated. If a contract stipulates no minimum annual cutting requirements the amount of each advance deposit shall be determined by the approving officer. The advance payments that may be required in the sale of trust allotted timber, pursuant to § 163.16, shall not operate to reduce the size of advance deposits required by this section, but may postpone the necessity of requiring such deposits until the advance payments on the particular allotments being cut have been exhausted.

[27 FR 12929, Dec. 29, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.16 Advance payment for allotment timber.**

Unless otherwise authorized by the Secretary, and except in the case of lump sum sales, contracts for the sale of timber from trust allotments shall provide for the payment of 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting

begins. Additional advance payments may be specified in contracts that are more than 3 years in duration; however, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from the allotment exceed 50 percent of the bid stumpage value. The advance payments shall be credited against the allotment timber as it is cut and scaled, at the stumpage rates governing at the time of scaling.

[38 FR 24639, Sept. 10, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.17 Time for cutting timber.**

Unless otherwise authorized by the Secretary, the maximum period which shall be allowed, after the effective date of a timber contract, for cutting of the estimated volume of timber purchased shall be 5 years.

[24 FR 7872, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.18 Deductions for administrative expenses.**

In sales of timber from either allotted or unallotted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction, or the manner in which it is to be made, there shall be deducted 10 percent of the gross amount received for timber sold under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner.

(Act of April 30, 1964, 78 Stat. 186, 187)

[29 FR 14741, Oct. 29, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 163.19 Timber cutting permits.

(a) Except as provided in § 163.20, all timber cutting that is not done under formal contract, pursuant to § 163.12, shall be done under timber cutting permit forms approved by the Secretary. Permits will be issued only with the consent of the Indian owner or the Secretary, for allotted lands, as authorized in § 163.13(b). Such consents to the issuance of cutting permits shall stipulate the minimum stumpage rates at which timber may be sold under permit.

(b) Free-use cutting permits may be issued for specified species and types of forest products by persons authorized under § 163.13 to execute timber contracts. Timber cut under this authority may be limited as to sale or exchange for other goods or services.

(c) An Indian having sole beneficial interest in an allotment may be issued an approved form of special permit to cut and sell designated timber from such allotment. The special permit shall include provision for payment by the Indian of administrative expenses pursuant to § 163.18. Unless waived by the Secretary, the permit shall also require the Indian to make a deposit with the Secretary to be returned to the Indian upon satisfactory completion of the permit or to be used by the Secretary in his discretion for planting or other work to offset damage to the land or the timber caused by the Indian's failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian may be required to provide evidence acceptable to the Secretary that he has arranged a bona fide sale of the timber to be cut, on terms that will protect the Indian's interests. In special cases, the Secretary may authorize exceptions to the requirement of sole beneficial interest in an allotment.

(d) Permits to be valid must be approved by the Secretary. The stumpage value which may be cut in 1 calendar year by any individual under authority of paragraphs (a) and (b) of this section shall not exceed \$2,500, but this limitation shall not apply to cutting under authority in paragraph (c) of this

section. Essential departures from the fundamental requirements for issuance of special allotment timber cutting permits under authority of paragraph (c) of this section shall be made only with the approval of the Secretary.

[38 FR 24639, Sept. 10, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.20 Free-use cutting without permits.**

(a) Timber may be cut by an Indian for his personal use from an allotment in which he holds the sole beneficial interest, without a permit or contract; but timber cut under this authority shall not be sold, or exchanged for other goods or services. Such cutting shall conform to the principles of conservative use as contemplated by § 163.4.

(b) With the consent of the authorized tribal representatives and the Secretary, Indians may cut designated types of forest products from unallotted lands without a permit or contract, and without charge. Timber cut under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services. Such cutting shall conform to the principles of conservative use as contemplated by § 163.4.

[24 FR 7872, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.21 Fire protective measures.**

The Secretary is authorized to hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation to extinguish forest or range fires. No expense for fighting a fire outside a reservation may be incurred unless the fire threatens the reservation, or unless such expense is incurred pursuant to an approved cooperative agreement with another forest protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for such fire fighting services that are currently in use by public and private forest fire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been

approved by the Secretary. The Secretary may enter into reciprocal agreements with any fire organizations, maintaining fire protection facilities in the vicinity of Indian reservations, for mutual aid in fire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid, in fire protection pursuant to the act of May 27, 1959 (69 Stat. 66).

[24 FR 7872, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.22 Trespass.**

(a) Federal statutes provide that:

(1) Willful and unauthorized setting fire to timber, underbrush, or grass or other inflammable material upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, is punishable by fine of not more than \$5,000 or imprisonment of not more than 5 years, or both.

(2) Whoever, having kindled or caused to be kindled, a fire in or near any forest timber, or other inflammable material on such lands, leaves said fire without totally extinguishing it, or permits such fire to spread beyond his control or leaves such fire unattended shall be fined not more than \$500 or imprisoned not more than 6 months, or both.

(3) The unlawful cutting or wanton injury or destruction of trees standing, growing, or being upon such lands is punishable by fine of not more than \$1,000 or imprisonment of not more than one year, or both.

(4) Section 1 of the act of June 25, 1948 (62 Stat. 787 (18 U.S.C. 1853)) provides penalties for the unlawful cutting of timber on Government lands and on Indian lands under Government supervision.

(b) The Secretary may mark and forbid the removal of timber from restricted or trust Indian lands or direct its removal to a point of safekeeping when he has reason to believe that such timber was unlawfully cut. Any such timber that can be positively identified as Indian trust property should be sold to prevent its deterioration. When any timber cut in trespass is found to be removed to land not under Government supervision, the owner of the land should be notified that such timber is Indian trust property and any further action should be upon advice of the Office of the Solicitor of the Department of the Interior. Any timber sold under this § 163.22 may be disposed of under the provision of this Part 163 insofar as they are applicable. The Secretary may accept payment of damages in full in the settlement of civil trespass cases without resort to court action. The Secretary may also accept a recommended settlement per Solicitor's Regulations Manual I.4.1 when exercised in accordance with regulations contained in 344 DM 3.

All other matters relating to the collection of debts under this section will be in accordance with Departmental Manual, Part 344.

(25 U.S.C. 9)

[42 FR 40194, Aug. 9, 1977. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 163.23 Appeals under timber contracts.**

Any action taken by an approving officer exercising delegated authority from the Secretary of the Interior or by a subordinate official of the Department of the Interior exercising an authority by the terms of the contract may be appealed to the Secretary of the Interior. Such appeal shall not stay any action under the contract unless otherwise directed by the Secretary of the Interior. Appeals will be filed in accordance with any applicable general regulations covering appeals. The Secretary shall notify the appropriate Indian tribal representatives upon receipt of an appeal by

the purchaser, and shall notify the purchaser upon receipt of an appeal by the seller.

[24 FR 7872, Sept. 30, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

## APPENDIX I

PARTIES TO THE PROCEEDINGS BELOW:  
**PLAINTIFFS IN SHORT v. UNITED STATES**  
 (BY CATEGORIES)

Category 1: Plaintiffs who, in 1973-78, were held or stipulated to be Indians of the Hoopa Valley Reservation:

Decl. No.	Name	Decl. No.	Name
00001	SHORT, Jessie Quinn	01251	JAMES, Patti Lynn (Bowen)
00002	WILLIAMS, Harry D.	01252	JAMES, Paul Dean
00003	JAMES, Jimmie Paul	01253	JAMES, Rebecca Kitty
00004	BARBER, Rethena Billy	01298	JOHNSON, Ella
00005	FOSCIDE, Ollie Roberts	01300	JOHNSON, Johnnie
00006	GENSAW, William Sr.	01425	KNIGHT, Frances
00008	McCOVEY, George, Sr.	01472	LEWIS, Andrew, III
00009	McCOVEY, Myrtle	01481	LEWIS, David William
00010	McCOVEY, Sadie	01496	LEWIS, Janice Lorraine
00036	ALAMEDA, Jesse Dorothy	01497	LEWIS, John Arthur
00085	AMES, Frank Sr.	01500	LEWIS, Marilyn (Latham)
00087	AMES, Howard	01621	McCOVEY, Charles, III
00088	AMES, Jackson	01629	McCOVEY, Elsie Gray
00089	AMES, Leonard	01630	McCOVEY, Florence (Byrns)
00091	AMES, Louisa Dowd	01635	McCOVEY, Howard L.
00120	AMOS, Sylvia Rose	01662	McCOVEY, Stacey
00211	BEAVER, Florence Nix	01667	McCOVEY, Walter, Sr.
00517	COOPER, Nellie (Billy)	01712	McKINNON, Neil, Jr.
00613	DENNISON, Viola	01714	McKINNON, Nettie
00641	DONLEY, Frank A.	01717	McKINNON, Walter C.
00643	DONNELLY, Lulu	01738	McNEAL, Nellie
00849	GENSAW, Belle V.	01775	MAGEE, Jessie Darlene
00856	GENSAW, James R.	01785	McCOVEY, Ethel Mae
01071	HECKATHORN, Margaret	01793	MARKUSSEN, Albert, Jr.
01106	HENRY, Lucy	01801	MARKUSSEN, Llewellyn
01173	HOPPELL, James Jack	01939	MENNOW, William
01242	JAMES, Ida Elizabeth	01968	MITCHELL, Darren
01243	JAMES, Jimmie Steve	01970	MITCHELL, Edward, Sr.
01245	JAMES, Josephine	01974	MITCHELL, Mae
01246	JAMES, Lorita Faye	01978	MITCHELL, Theresa
01247	JAMES, Matthew Ruben	02091	MYERS, Eviretta Rose
01248	JAMES, Noreen (Shepherd)	02130	NIX, Annie Lillian
		02137	NIX, Leo Carter, Jr.

Decl. No.	Name	Decl. No.	Name
02138	NIX, Libby	02940	SYLVIA, Bud Trefeny
02200	OBIE, Anthony	02941	SYLVIA, David Paul
02201	OBIE, Antone	02942	SYLVIA, Lena Rosette
02203	OBIE, Denis Faye	02943	SYLVIA, Peter
02204	OBIE, Jon David	02944	SYLVIA, Tony Joel
02205	OBIE, Marie Judith	02945	SYLVIA, Tracy Marie
02214	OBIE, Robert Willis	02971	TAYLOR, Oscar
02215	OBIE, Roxanne	03173	WHITE, Nancy (Coleman)
02225	OFFINS, Norma Helene	03310	YOUNG, Christopher
02240	O'NEILL, David Eugene	03314	YOUNG, Laura Mareep
02241	O'NEILL, Ellen	03315	YOUNG, Nancy
02248	O'NEILL, Terri Jo	03317	YOUNG, Samuel Gary, Jr.
02249	O'NEILL, William	03357	BLAKE, Ethel Mae
02255	O'ROURKE, Kay Lorraine	03358	BLAKE, Harold Alfred
02256	O'ROURKE, Lawrence	03382	CAMPBELL, Georgia
02257	O'ROURKE, Margaret	03409	COLEGROVE, Marilyn Sue
02260	O'ROURKE, Patricia	03442	DE LA ROSA, Carol
02263	O'ROURKE, Thomas	03448	DOWD, Charles
02264	O'ROURKE, Valerie	03349	DOWD, George Milton
02335	PETERS, Bertha (Mitchell)	03450	DOWD, William, Jr.
02340	PETERS, Eugene	03453	DOWNS, Lorna Nancy
02353	PETERS, William	03482	FLACHSMAN, Bessie
02412	PUZZ, Lillian Blake	03535	GRIFFITH, Earl, Sr.
02515	RICHARDS, Denny, Jr.	03555	JACKSON, Betty Delphine
02556	ROBERTS, Frances	03562	JAMES, Queen S.
02568	ROBINSON, Josephine	03607	LEWIS, Andrew, Jr.
02616	ROWLAND, Melinda Mae	03624	MASTEN, Bonita
02724	SHAUGHNESSY, Florence	03641	MOORE, Arnold
02798	SMOKER, Elsie Dorene	03644	MOORE, Edward Michael
02800	SMOKER, Florena	03650	MOORE, Violet
02802	SMOKER, Gorham, Jr.	03666	MYERS, Melissa
02803	SMOKER, Gorham, Sr.	03690	MC LAUGHLIN, Thelma
02804	SMOKER, Helen Delores	03711	ORCUTT, Barbara
02805	SMOKER, Linda Ann	03713	ORCUTT, Lawrence
02809	SMOKER, Sam	03720	PETERS, Floyd John
02811	SMOKER, Thelma Mary	03764	SHERMAN, Libby
02812	SMOKER, William Earl	03806	TURNER, Carrie
02938	SYLVIA, Alberto Reva	03836	WILDER, Rose Lorraine
02939	SYLVIA, Annabelle		

Category 1 Subtotal: 142

Category 2: Plaintiffs living on October 1, 1949 who received summary judgment of entitlement by listing on "Attachment A" of the Trial Judge's Recommended Opinion of May 3, 1982:

Decl. No.	Name	Decl. No.	Name
00007	MACK, Oscar	00079	ALVARADO, Harlan
00011	PETERS, Charles D.		James
00012	QUINN, George H.	00080	ALVARADO, Lucinda
00013	REED, Grover		Myers
00014	ROGERS, Alta Mae	00081	ALVARADO, Manuel M.
00015	STANLEY, Eleanor	00083	ALVARADO, Steven
	Richards	00086	AMES, Harold
00016	TAYLOR, Ruby	00116	AMOS, Margaret V. Isle
00020	ABBOTT, Charles W.,	00117	AMOS, Marvin Leroy
	Sr.	00118	AMOS, Sharon Diane
00022	ABBOTT, George	00122	AMOS, Walter Bruce
	Walter	00124	ANDERSON, Ellen E.
00025	ABBOTT, Mae Charles		Ferris
00027	ABBOTT, Warren	00128	ANDERSON, Myron
	George		W., Sr.
00028	ABINANTI, Naomi C.	00132	ANGELL, Lucius C. IV
00029	ABINANTI, Abby Noel	00134	ANGELL, Velva Elaine
00030	ABINANTI, Stephen R.		Cooper
00031	ADAMS, Mary E.	00138	AUBREY, Henry
	Gensaw		Roland
00034	ADAMSON, Louanna	00139	AUBREY, Julius Bryan
	Mae	00140	AYERS, Beverly J.
00037	ALAMEDA, Henry		Masten
	Clinton, Sr.	00143	BABB, Dianne Fay
00041	ALAMEDA, Leona		Mollier
	Vivian Bristol	00147	BABCOCK, Glenna M.
00048	ALARCON, Mary L.	00150	BACON, Bonita
	Moreno		Gonzales Green
00055	ALBERS, Marie Gale	00151	BACON, Carmen
	Markusson		Gonzales Mauromi
00059	ALLEN, Alme Hiram	00152	BACON, Elsie McCovey
00061	ALLEN, Duane W., Sr.	00154	BACON, Gerald
00068	ALLEN, Loretta Evelyn		Gonzales
00069	ALLEN, Mayme Celesta	00171	BAKER, Patricia A. T.
00070	ALLEN, Orvel M., Jr.	00172	BARLOW, Milton Gene
00071	ALLEN, Orvel M., Sr.	00173	BARLOW, Vernon
00075	ALLMAN, Lorita		Charles
	McDonald	00175	BARNES, Dolores
00076	ALTREE, Florence		LaVerne
	Alvina Martin McGee	00177	BARNETT, Rose Marie
			T.

Decl. No.	Name	Decl. No.	Name
00180	BARTOW, Julia Lauretta Jones	00287	BOWERS, Lavina Lee Mattz
00187	BATES, Florene Fern Charles	00297	BOYD, Tanya Louise
00188	BATES, Pauline Charles	00299	BOYER, Marie Ann Decanti
00194	BATTERTON, Dorothea Richards	00300	BRAMHALL, Della
00198	BAUER, Marcia A. Kinder	00301	BRAMHALL, Linda Powell
00200	BEAIRD, Loleta Ann	00303	BRASHER, Rosemary Woods Smith
00201	BEALL, Margaret Mendez	00307	BRETT, Veronica Dee Hendrix
00204	BEAN, Charles L., Sr.	00308	BRISTOL, Frederick Lawrence
00205	BEAN, Chester Alvin	00309	BRISTOL, Herman Clinton
00207	BEAN, Leroy Raymond George	00312	BROOKS, Gloria Jean Thomas
00209	BEAN, Sugar Venita A.	00314	BROOKS, James William, Jr.
00210	BEAN, William Albert	00315	BROOKS, Melford Roy
00212	BEAVER, Glenna Elaine	00320	BROOKS, Roland Edward
00221	BEEBE, Hestin Earl	00327	BROWN, Arlene Alice Reece Giddings
00222	BEEBE, Jack Newton	00334	BROWN, Dorothy Smoker
00224	BEEBE, Sandra Lee	00337	BROWN, Elvera Louise Ryerson
00226	BEEBE, Verna Fay	00351	BRUNO, Merrilyn Irene Perkins
00231	BELGARD, Victoria M. Gensaw	00352	BUCHHOLZ, Nadine Rose Luster
00232	BELLAS, Doreen	00353	BUCKLEY, Darlene Joy
00234	BENNETT, Iola Naomi Minard	00355	BUCKLEY, George Edward
00238	BERNIER, Charlotte L. Schwenk	00357	BUCKLEY, Loleta Ethel Thompson
00239	BETSCH, Greta	00363	BURNS, Venita Annie Woods Bean
00252	BIRCHFIELD, Mary Mae Crutchfield	00364	BURNS, Gifford A. Bennett Mooge
00258	BLACKBURN, Patricia Nell		
00263	BLAKE, Catherine A.		
00264	BLAKE, Earl		
00266	BLAKE, Richard Carl		
00267	BLAKE, Roy		
00282	BONACCI, Patricia K.		
00284	BOW, William, Jr.		

Decl. No.	Name	Decl. No.	Name
00372	BUTRICK, Janet Geneva Mattz	00444	CHARLES, Walter Henry
00384	CALDWELL, Margaret Marasco	00445	CHARLEY, Dewayne Lee
00385	CALDWELL, Pauline Deanne Ipina	00446	CHARLEY, Peter Robert
00388	CALFIE, Ronald Eugene	00447	CHARLEY, Susan Charlene
00395	CARLSON, Marguerite	00450	CHASE, Daniel Lee
00400	CARR, Shirley Mae Williams	00451	CHASE, Francis Edward
00404	CARROLL, Dinana Lee	00456	CHASE, Lottie McDaniel Taggart
00405	CARROLL, Jeanette Julie Ann	00459	CHEZEM, Annette Luster
00409	CARROLL, Mary Louise	00462	CHILDS, Kenneth C., Sr.
00413	CASTON, Melvin Mervin	00463	CHILDS, Nettie Gray
00416	CASTRO, Judith Ann McCoy	00466	CINQ-MARS, Margaret Cooper
00422	CHARLES, Ada Harry Waukell	00471	CLARK, Richard Lee
00423	CHARLES, Arlen Luther	00473	CLARKE, Joyce Jean Wilder
00425	CHARLES, Cecil Albert, Sr.	00475	CLARY, Elaine Lila
00426	CHARLES, Clarice Louise	00476	CLAYTON, Bonnie Carleen McCloskey
00427	CHARLES, Frank George	00478	CLEMENTS, Lydia Rose G. Brownell
00429	CHARLES, Henrietta	00479	CLEMENTS, William Edward Smoker
00433	CHARLES, Kenneth Curtis	00480	CLEVELAND, Andrew Lawrence
00437	CHARLES, Lloyd Lewis	00481	CLEVELAND, Nellie Sara Bowie P. Hurst

Decl. No.	Name	Decl. No.	Name
00484	CLOSE, Muriel O. Lyons	00552	CRUTCHFIELD, Abner
00486	COLEMAN, Carmen		Byron
	Ann Young Styles	00554	CRUTCHFIELD,
00489	COMBS, Barbara		Carmen Marie Walker
	Deanne Lewis White	00555	CRUTCHFIELD,
00494	CONNER, Jolene A.		Edward H.
	Smith	00559	CRUTCHFIELD, Robert
00496	CONNER, Lavina Ruby		E.
	McKinnon	00562	CRUTCHFIELD, Victor
00497	CONNER, Fansy Greta		I.
00498	COOK, Glenna Lorena	00563	CRUTCHFIELD,
	Tripp		William H.
00500	COOK, Margaret Blake	00564	CUDDIE, Edna Sophia
00503	COOKE, William Robert		Puzz
00504	COOLEY, Gerald	00565	CUNNINGHAM,
	Coleman		Lorraine R. Howard
00505	COOLEY, Kathleen May	00568	CURTICE, Frances
	Figueroa		Freda
00506	COOPER, Cornelius Jay	00579	DAIGNAULT, Bonnie
00507	COOPER, Christine D.		W.
	Smith	00582	DANKULICH, Norma
00511	COOPER, Henry Clay		Mary Puzz Boyd
	III	00588	DAVIDSON, Jolene
00512	COOPER, Henry Clay,		Masten
	Jr.	00589	DAVIS, Allie, Jr.
00513	COOPER, Homer	00591	DAVIS, Dianne Yvonne
00514	COOPER, Kathryn	00592	DAVIS, Edythe Nitsche
	Elizabeth Wilder	00596	DAVIS, Norma Jean
00518	COOPER, Ralph Duane		Taylor
00519	COOPER, Rodney Dean,	00597	DAVIS, Robert Elmer
	Sr.	00598	DAVIS, Rosa Marie
00523	COOPER, Vernon E.		McCovey
00525	COOPER, Wayne Amos,	00600	DAWSON, Clara Ann
	Sr.	00603	DAY, Bettye Zane
00527	COSTA, Dennis Mark		Sandersonn
00528	COSTA, Joanne Barbara	00605	DECANTI, Anthony
	Wilder		Martin
00534	COX, Darlene Anne	00608	DECANTI, Marion
00536	COX, Lois Ilene Wilson		Clara Fong White
00539	CRAMER, Eva Mae		
	Histov		

Decl. No.	Name	Decl. No.	Name
00611	DELGADO, Minerva Jean Peters George	00699	ELLIS, Lena Masten
00615	DEVALLY, Patricia Ann McNeal	00700	ELLIS, Mary Catherine
00620	DEVLIN, Nellie Billy	00701	ELLIS, Merlyn Edward
00624	DICK, Daisy Wonnah Lyons Johnson	00702	ELLIS, Michael John
00645	DOWD, Frank Benjamin	00703	ELLIS, Roberta Marie
00649	DOWD, Kenneth William	00704	ELLIS, Thomas William
00653	DOWD, Venola McCovey	00706	ENGLAND, Lucille Gayle Lewis
00654	DOWNS, Frederick Lewis, Sr.	00707	ERVIN, Carol Ann Tripp
00657	DOWNS, Mary Ellen	00713	ESLICK, Mary J. Peters
00659	DOWNS, Ralph E., Sr.	00714	EVANS, Edwina L. Wilder
00661	DOWNS, Sandra E. McLaughlin	00716	EVANS, Norma Jean
00667	DRYDEN, Beverly Violet	00719	FAUSTINO, Ina Turner
00670	DRYDEN, Valdee Chester, Jr.	00720	FAUSTINO, Marilyn M. Quinn
00671	DUCKEY, Darrelen Hope Schwenk	00724	FERNANDES, Eunice Kay
00673	DUGGAN, Estelle Histov	00725	FERRIS, Clifford M.
00682	ECHOLS, Florence C.O. Holzhauser	00730	FERRIS, Wilfred E., Sr.
00684	EDDY, Donna Marie	00731	FERRIS, Wilfred E., Jr.
00685	EDWARDS, Bernice Robinson	00733	FIESTER, Wilma Mae
00686	EDWARDS, Eugene Daniel, Jr.	00736	FIGUEROA, Aileen Mae
00688	EDWARDS, William Ronald	00737	FIGUEROA, Alice McClellan
00689	EHRLICH, Caroline Ann George	00740	FIGUEROA, Raymond D., Jr.
00691	EISELE, Darrel Dwayne	00742	FISHER, Lena G. Roberts
00692	EISELE, Edwin Earl, Jr.	00748	FLETCHER, Sophia Mae Griffin
00693	EISELE, Ellen E. Isle	00750	FLORIS, Floyd Harold, Jr.
00695	EISELE, Raymond Ward	00757	FONG, John
		00761	FONG, William Oakhurst
		00762	FORD, Calvin G.
		00765	FORD, Mary Ann Johannsen
		00771	FOSTER, Charlotte Brown

Decl. No.	Name	Decl. No.	Name
00773	FOSTER, Stuart Covington	00836	RAKESTRAW, Barbara Jean Galyean
00774	FRAME, Benet Pitt	00840	GALYEAN, John Irvine
00775	FRAME, Brian Peter	00842	GALYEAN, Michael J.
00776	FRANCIS, Ida E. Hufford	00843	GALYEAN, Rosa L. Gore
00778	FRANK, Dixie Lee Nix	00844	GALYEAN, Florence Gensaw
00780	FRANK, Kenneth, Sr.	00847	GENSAW, Alma Joyce Novoa
00782	FRANK, Minnie W.	00850	GENSAW, Carroll
00784	FRANK, William, Jr.	00862	GENSAW, Margaret
00788	FRANKLIN, Nadine Ada	00864	GENSAW, Oscar Taylor, Sr.
00790	FRANKS, Ada Mae Jones	00868	GENSAW, Ramona
00791	FRANKS, Carolyn	00869	GENSAW, Raymond
00793	FRANKS, John	00873	GENSAW, Samuel Lloyd, Sr.
00796	FRANKS, Olive Frank	00877	GENSAW, William E. II
00797	FRANKS, Pamela Juanell Malloy	00881	GEORGE, Dewey
00798	FRANKS, Ricky	00889	GIBBS, Mabel Scott Stevens
00801	FRANKS, Ronald Raymond	00891	GIDDINGS, Muriel Ann
00802	FRAZIER, Melva J. Oscar	00893	GILBERT, Carrie B.
00803	FREDERICKSON, Estelle Fern	00894	GILKISON, Adrian L.
00804	FRENCH, Daisy Mae	00909	GILLHAM, Donna Rae Pearson
00806	FRENCH, Gloria Jean Sanderson	00912	GIST, Frank Gray, Sr.
00807	FRENCH, Ronald Rose	00914	GIST, Gladys Delores
00810	FRYE, David Leonard	00922	GRADY, Eltheria Moore Leatherberry
00818	FRYE, Muriel Sophie	00925	GRANT, Elinor Jackson Puzz
00823	FULMOR, Rachel Mead	00928	GRAY, Albert Taylor, Sr.
00827	FULWIDER, Georgia G. Lindgren	00929	GRAY, James B., Jr.
00829	GABY, Dorothy E. Allen	00937	GREEN, Catherine Peters
00830	GACHES, Barbara Kaloa	00939	GREEN, Marlene Nettie McKinnon
00834	GALLACCI, Wilda V. Lingren		

Decl. No.	Name	Decl. No.	Name
00949	GRIFFIN, Denny	01023	HANCORNE, Greta
00953	GRIFFIN, Harry Willis	01024	HANCORNE, Henrietta
00954	GRIFFIN, James		C. Silva
00955	GRIFFIN, Maffie Abbie	01025	HANCORNE, Henry
	Goodman P.		Clay
00956	GRIFFIN, Nellie	01026	HANCORNE, Henry C.,
	McDonald		Jr.
00957	GRIFFIN, Rhoda Lillian	01027	HANCORNE, Jessie
00959	GRIFFIN, Stanley		Wonnah
	Seeley, Jr.	01028	HANCORNE, Oliver W.
00961	GRIFFIN, Wallace	01029	HANCORNE, Susan
00964	GRIFFITH, Earl, Jr.		Belle
00966	GRIFFIN, Lillian L.	01035	HAND, Vivian Karen
00967	GRIFFITH, Marilyn E.	01036	HANNON, Susan
00979	GRUBBS, Cecil Joseph	01037	HANSEN, Effie G.
00980	GRUBBS, Darrell Lee		McDaniel
00982	GRUBBS, Harold Roy	01038	HARDER, Helen E. Isle
00984	GRUBBS, Marsha Lynn	01040	HARDER, Michael E.
00986	GRUBBS, Merlin	01050	HARRISON, Georgia L.
	Edward		Stevens
00987	GRUBBS, Mervin	01053	HARRISON, Roselena
	Eugene		Mae
00989	GRUBBS, Ronald Lee	01055	HARTMAN, Elwood
00996	HAAS, Jean Murdock		Dempsey
	McKee	01058	HARTMAN, Ollie Quinn
00997	HABERMAN, Alton V.	01059	HARTMAN, Sharon
00999	HABERMAN, Dorothy		Fern
	Williams	01060	HARTMAN, Wayne
01001	HABERMAN, Henry		Delano
	Gary	01062	HAVEN, Jennie Masten
01002	HABERMAN, Lyle	01072	HEINER, Barry Lynn
	Dean	01073	HEINER, Edward J.
01004	HABERMAN, Richard	01076	HEINER, Larry Wayne
	Lee	01077	HEINER, Maisie Irene
01005	HABERMAN, Rodney		Wilder
	Lynn	01079	HEITMAN, Mona
01006	HAIGHT, Marie		Yvonne
	Roberts Davis	01084	HELMS, Faith Marie
01007	HALE, Sadie Elizabeth	01092	HENDRICKSON,
01009	HALSTEAD, Robert A.		Laverne F.
01021	HANCORNE, Edith B.	01095	HENDRIX, Irving, Jr.
	Nix	01096	HENDRIX, Larry Zane
01022	HANCORNE, George E.		

Decl. No.	Name	Decl. No.	Name
01098	HENDRIX, Mabel Hodge	01185	HOTELLING, Wesley E., Sr.
01102	HENRY, Elliott M., Sr.	01186	HOTELLING, Wyndee E.
01113	HICKEY, Lillian J. Obie Masten	01189	HOWARD, Earl Vernon. Jr.
01118	HILL, Nellie Bullhead. Jr.	01191	HOWARD, Gary Wayne
01122	HODGE, Charlotte Lee	01192	HOWARD, Imogene G.
01125	HODGE, Gary Ray	01193	HOWARD, Imogene L.
01127	HODGE, James Sidney	01194	HOWARD, Margaret T.
01132	HODGE, Leroy Thomas	01196	HOWARD, Nancy Jean
01134	HODGE, Otto, Sr.	01199	HUFFMAN, Esther Pearl McKinnon
01136	HODGE, Paul Eugene	01202	HUFFORD, Elmer
01138	HODGE, Robert, Sr.	01204	HUFFORD, Joseph E.
01141	HOFFMAN, Evelina McCovey	01205	HUFFORD, Leslie F.
01142	HOFFMAN, Linda Lee	01206	HUFFORD, Vina
01147	HOLDREN, Alice Marie Eisele	01207	HUFFORD, Walter George
01149	HOLZHAUSER, Agnes Gist Oscar	01210	HUNSUCKER, Patricia J. Frye Mendez
01154	HONEYCUTT, Calvin Guy	01219	IIAMS, Ellen Ann Evans
01155	HONEYCUTT, Chester J.	01227	IPINA, Christine D. Reed
01156	HONEYCUTT, Chester M.	01230	ISKRA, Betty Jane Griffin
01157	HONEYCUTT, Diane E.	01232	ISKRA, Jerome Wesley
01158	HONEYCUTT, Ernest D.	01234	JACKSON, Ethel Oscar
01160	HONEYCUTT, Lena Isle	01236	JACKSON, Henry, Sr.
01163	HONEYCUTT, Peggy Sharon	01237	JAKE, Ester Marie
01165	HONEYCUTT, Ralph Vernon	01239	JAMES, Daniel
01166	HOOPER, Nettie Irene Robinson Barton	01250	JAMES, Ollie Mary
01182	HOTELLING, Daisy Dean	01255	JAMES, Theodore R.
01184	HOTELLING, Wesley E., Jr.	01256	JAMES, Theodore
		01263	JAY, Gloria Faye Lewis
		01264	JAYNES, Frances Rose James McDonald
		01265	JAYNES, Stokes James
		01267	JENNINGS, Mary
		01271	JOHANNSEN, Allen G.
		01275	JOHANNSEN, Hans

Decl. No.	Name	Decl. No.	Name
01277	JOHANNSEN, Hiram. Sr.	01401	KINGSLEY, Christine Jake Adams
01278	JOHANNSEN, Hiram. Jr.	01402	KINGSLEY, Phillip Lee
01279	JOHANNSEN, Ilene K.	01403	KINGSLEY, Wallace D.
01283	JOHANNSEN, John Peter	01406	KINNEY, Dean Milton. Sr.
01286	JOHANNSEN, Linda Lee	01408	KINNEY, Don Miller. Sr.
01288	JOHANNSEN, Robert	01411	KINNEY, Robert Leroy. Jr.
01291	JOHNSON, Ada Hodge	01412	KINNEY, Robert Leroy. Sr.
01292	JOHNSON, Albert, Jr.	01413	KINNEY, Wayne Alan
01293	JOHNSON, Ben Grant	01414	KINNEY, William Wade
01297	JOHNSON, Donald Lee	01415	KINNEY, Zeima Marie Minard
01299	JOHNSON, Henry Orin	01419	KIRTS, Jeanette Adell Frizzell
01301	JOHNSON, Judy Ann	01423	KLEINHANS, Mona Marie Blake Owen
01304	JOHNNIE, Leslie Leroy	01426	KNIGHT, Lawrence R.
01308	JOHNSON, Vivan K.	01428	KNIGHT, Rachel L. Boskey
01309	JOHNSTON, Beverly Jean Meak Hurd	01429	KNUDSEN, Daniel E.
01313	JONES, Clifford G.	01430	KNUDSEN, Lawrence Maddux, Jr.
01314	JONES, Clifford N.	01431	KNUDSEN, Lawrence M., Sr.
01316	JONES, Delma Jean	01432	KNUDSON, Mabel M.
01321	JONES, Howard Jacob	01433	KNUDSEN, Ruth Lewis
01323	JONES, Julia L. Wilson	01434	KNUDSEN, William K.
01325	JONES, Kenneth Grover	01435	KOCH, Carole J. Cooper Sanders
01328	JONES, Marvin Wallace	01436	KOCH, Terry
01329	JONES, Richard W.	01437	KOCH, Viola
01330	JONES, Samuel, Jr.	01441	KUENSTER, Janet E.
01331	JONES, Samuel, Sr.	01442	KUENSTER, Jerome E., Jr.
01354	KANE, Cinderella Minard	01444	KUENSTER, Mildred Mae
01355	KANE, Clara Dean		
01357	KANE, Gerald Ollie		
01373	KEISNER, Louise		
01377	KINDRICK, Katherine L. Honeycutt		
01389	KINDER, Clifford L. Thomas		
01394	KINDER, Martin A., Sr.		

Decl. No.	Name	Decl. No.	Name
01446	LA FRANCHI, Elverna J. Sanderson	01527	LITTLE, William H.
01450	LAMBERT, Mary L. McConnell Sergeys	01530	LITTLEFIELD, Sylvia Galyean
01459	LARA, Walter James. Sr.	01533	LOGAN, Arlene Francis
01461	LAVENDER, Marie Louise Knight	01534	LOGAN, Eleanor Roberts
01463	LAWSON, Marie McCovey Valenzuela	01536	LOGAN, John, Jr.
01464	LEACH, Ruel Plasent Bussell	01537	LOGAN, Lillie E.
01466	LEEST, Anna Mae Meak	01541	LONG, Dunphy Tom
01469	LEWIS, Alfred	01547	LONG, Susie L. Hendrix Butts
01470	LEWIS, Alice Jane Taylord	01554	LOWDEN, Mary M. Williams
01471	LEWIS, Alice Mae Sanderson	01566	LUSTER, Grace L. Quinn
01473	LEWIS, Arthur Jr.	01568	LYALL, Roanne E. Filgate
01474	LEWIS, Arthur D., Sr.	01569	LYONS, Harold Lowell
01475	LEWIS, Arvada Faye	01570	LYONS, Harrison
01476	LEWIS, Athena P. Rube	01574	LYONS, Orville J.
01480	LEWIS, Darrel Gene	01576	LYTLE, Julie Anne Perkins
01483	LEWIS, Dorothy Cooper	01579	McALLISTER, Charles W.
01485	LEWIS, Ernest, Sr.	01581	McALLISTER, Eugene Derwood
01488	LEWIS, Franklin D., Sr.	01582	McALLISTER, Gary E.
01491	LEWIS, Gaylord W., Sr.	01583	McALLISTER, Ladonna
01493	LEWIS, Harold Joseph	01584	McALLISTER, Robert L.
01495	LEWIS, Henry Clay, Sr.	01589	MCCLAFLIN, Bonnie Louella Scott
01504	LEWIS, Rose Marie Luddington	01592	McCLELLAN, Eva
01509	LILLY, Oscar	01596	McCLOSKEY, Betty M. Brownell
01512	LINDGREN, Axel Roderick, Jr.	01597	McCLOSKEY, Richard
01515	LINDGREN, Charles	01598	McCLOSKEY, Ronald
01517	LINDGREN, Dixie Lee	01602	McCONNELL, Ardith Edith Wilder
01518	LINDGREN, Glenda Kay	01605	McCONNELL, Howard D.
01523	LINDGREN, Roberta A.	01609	McCONNELL, Michael
01524	LINDGREN, William	01611	McCONNELL, Nora Ann
01525	LITTLE, Joan Louise		
01526	LITTLE, Louise L.		

Decl. No.	Name	Decl. No.	Name
01612	McCONNELL, Robert B.	01711	McKINNON, Neil Gary
01615	McCOVEY, Allen C., Jr.	01713	McKINNON, Neil M., Sr.
01616	McCOVEY, Allen, Sr.	01719	McLAUGHLIN, Charlene
01623	McCOVEY, Darrell D.	01726	McLAUGHLIN, Lucille S.
01627	McCOVEY, Donald	01727	McLAUGHLIN, Marian Mae Nix
01628	McCOVEY, Dwayne, Sr.	01728	McLAUGHLIN, Michael
01631	McCOVEY, Frank Lynn	01733	McNEAL, Cleveland
01633	McCOVEY, Gerald	01735	McNEAL, Elmer H., Sr.
01636	McCOVEY, Isaac, Jr.	01737	McNEAL, Joyce Louise
01641	McCOVEY, Joanne	01745	McNERTNEY, Barbara J.
01647	McCOVEY, Lawrence	01754	McQUILLEN, Ida E. James
01648	McCOVEY, Lena Isle	01757	McQUOID, Ida Faye Griffin
01650	McCOVEY, Lena Reed	01758	McREYNOLDS, Eleanor W. Quinn
01653	McCOVEY, Marilyn Ruth	01759	McVAY, Thelma A. Norris
01657	McCOVEY, Phyllis Y.	01760	McVEY, Jacquelyn A. Nelson
01659	McCOVEY, Richard L.	01763	MACK, Oscar, Jr.
01664	McCOVEY, Vada Norma John	01766	MacNEILL, Gloria Faye Hendrix
01666	McCOVEY, Walter, Jr.	01769	MacNEILL, Murray
01668	McCOVEY, William, Jr.	01771	MACOMBER, Minnie Spott
01669	McCOVEY, William I.	01779	MAHACH, Wilma Faith
01673	McCOY, Robert	01780	MAHAN, Thelma E. Wilder Galyeann
01674	McDERMOTT, Lenora	01787	MARASCO, Gertrude E. Parton
01677	McDONALD, Gloria N. Pitt Hixon	01788	MARASCO, James A.
01680	McDONALD, Rae E. Sullivan	01790	MARKERT, Hester V. McNeal
01685	McGAHUEY, Susan M.	01795	MARKUSSEN, Delford D.
01687	McGEE, Naomi	01799	MARKUSSEN, Kenneth Ray
01688	McGUIRE, Agnes Isle		
01689	McGUIRE, Alfred W.		
01690	McGUIRE, Amos E.		
01691	McGUIRE, Dennis E.		
01693	McGUIRE, James C.		
01695	McGUIRE, Michael Isle		
01696	McGUIRE, Olin Isle		
01697	McGUIRE, Patrick A.		
01705	McKINNON, Carl Melton		
01707	McKINNON, Duane		
01710	McKINNON, Lyle Leary		

Decl. No.	Name	Decl. No.	Name
01800	MARKUSSEN, Lenford L.	01919	MEAD, Ralph Edward
01802	MARKUSSEN, Vernon R.	01920	MEAK, Lena Blake
01803	MARKUSSEN, Wallace Roy	01921	MEIKLE, Frances Lindgren
01804	MARSHALL, Janice Marie	01922	MEIKLE, Perry W., Jr.
01806	MARTIN, Antone Tony	01923	MEIKLE, Sally Marie
01813	MARTIN, Ernest Gene	01931	MENZEMER, Marlene J. Watkins
01815	MARTIN, Eva Margaret Reed	01936	MENDEZ, Jessie Blake
01821	MARTIN, Joseph John	01937	MENDEZ, Richard
01829	MARTIN, Laverne L., Sr.	01938	MENNOW, George
01834	MARTIN, Marie J. Peters, Sr.	01941	MEREDETH, Dianne Ruby Sloan
01835	MARTIN, Marion Julius	01942	MERTLE, Gary Eugene
01847	MARTIN, Virgil Dean, Sr.	01944	MERTLE, Ola Mae Short
01848	MARTIN, Wilbur, Sr.	01945	MERTLE, Raymond F.
01849	MARTINEZ, Deanna I.	01946	MEYER, Pauline P.
01856	MASTEN, Ann Marie	01948	MEYERS, Shirlee Owen
01858	MASTEN, Catherine L.	01951	MILLER, Dale Allen
01859	MASTEN, Charles A., Jr.	01952	MILLER, Juanita Jane
01860	MASTEN, Charles A., Sr.	01953	MILLER, Malinda Jackson
01863	MASTEN, Darlene Grace Nix	01955	MILLIKEN, Dorothy L. Honeycutt
01865	MASTEN, Everett W.	01958	MINARD, Charles Dee
01873	MASTEN, Sharon E.	01961	MINARD, Lucinda James
01876	MASTEN, William M., Sr.	01962	MINARD, Phila
01884	MATA, Wilma I. Tripp	01964	MINARD, Robert A., Sr.
01888	MATILTON, Donna Peters Lewis	01965	MINARD, Timothy Evan
01901	MATTZ, Emery W., III	01966	MINARD, Zelida Mae
01902	MATTZ, Geneva Brooks	01967	MITCHELL, Betty Rose Taylor
01909	MATTZ, Marvin Bruce	01969	MITCHELL, Edward G., Jr.
01912	MATTZ, Raymond Gail	01981	MIZNER, Marilyn C.
01915	MAY, Nellie	01982	MOHR, Eva Paul
01916	MAY, Sandra Lee	01984	MOLLIER, Gertrude V.
		01985	MOLLIER, Harry C.
		01989	MOLLIER, Leo A.

Decl. No.	Name	Decl. No.	Name
01992	MOLLIER, Raymond W.	02086	MOTSCHMAN, Marianne
01993	MOLLIER, Roy Stanley	02087	MURDOCK, Anita Charles
01998	MONTES, Alice C. Minard	02088	MURDOCK, Franklin Ray
01999	MONTES, Alice Emily	02090	MYERS, Everett D.
02001	MONTES, Edward Dennis	02094	NABORS, Ruth Erickson Johannssen
02002	MONTES, Joseph J., Jr.	02097	NAPOLEON, Elsie Irene Natt
02005	MONTES, Walter	02099	NAPOLEON, Melvin Dion
02006	MOON, Alfred Carl, Jr.	02101	NATT, Cornelius
02008	MOON, Carmen Louise McCovey	02103	NATT, Donald C., Sr.
02010	MOON, Darlene Joyce	02105	NATT, Dorothy Mae
02012	MOON, Delores Annette Griffith	02106	NATT, Evelyn Griffith
02023	MOORE, Jocelyn Claire Robinson	02110	NATT, Sandy, Sr.
02024	MOORE, John Paul, Jr.	02111	NATT, Sandy, Jr.
02026	MOORE, Katheryn Dean Robinson	02112	NATT, Wilma Marie
02028	MOORE, Leslie Stephen	02115	NELSON, Elaine Mae
02035	MOOREHEAD, Beverly Williams	02122	NESBITT, Jeanette
02039	MOOREHEAD, Dennis	02125	NICKERSON, Merle M. Ward
02051	MOOREHEAD, Louise J. Winton	02126	NILES, Barbara Jean Taylor
02061	MORENO, Diane Phyllis	02128	NITSCHE, Mabel
02066	MORGAN, Nelda Gay Lewis	02129	NITSCHE, Robert
02070	MORRIS, Eloise Mildred	02133	NIX, Dorothy Dale Stevens
02074	MORRIS, Maydene Davis	02134	NIX, Jacqueline Dale
02076	MORRIS, Thelma M. Reece	02139	NIX, Peter Edward
02077	MORRISON, Barbara Price Robinson	02140	NIX, Sidney
02079	MOSELEY, Clara Lou	02141	NIX, Thomas J., Jr.
02083	MOSELEY, Vincent	02146	NORRIS, Constance E.
02084	MOTSCHMAN, Charles Arnold, Jr.	02150	NORRIS, Eldred Willis, Sr.
02085	MOTSCHMAN, Evelyn J. McDonald	02153	NORRIS, Evan Jay
		02156	NORRIS, Jack Duane
		02160	NORRIS, Leonard O., Sr.
		02161	NORRIS, Leroy Joseph
		02167	NORRIS, Mary Elizabeth

Decl. No.	Name	Decl. No.	Name
02171	NORRIS, Peter William	02262	O'ROURKE, Richard Francis, Jr.
02172	NORRIS, Ronald Leland	02267	OSCAR, Caroline
02174	NORRIS, Sharon Lee	02270	OSCAR, Fred
02176	NORRIS, Stanford E., Sr.	02275	OSCAR, Irene Virginia
02177	NORRIS, William W., Jr.	02276	OSCAR, Jerry, Sr.
02184	NOVOA, Lewis	02278	OSCAR, Mary Mae
02185	NOVOA, Linda Lee	02284	OWEN, Albert Ervin, Jr.
02188	NOVOA, Walter Mardo, Jr.	02291	OWNSBEY, Cecilia A. Reed
02189	NOVOA, Walter Mardo, Sr.	02293	OWSLEY, Jean C. Hartman McAllister
02191	NULPH, Diana Marie	02297	PARKER, Phyllis May Hancorne
02196	NUTTALL, Frances A. Roberts Jame	02298	PARKER, Ronald E.
02199	OBERDORF, Evelyn Ryerson	02301	PARTON, Mamie Marie Ryan
02207	OBIE, Leslie Elmer	02302	PATAPOFF, Evelyn Safford
02208	OBIE, Lester Allen	02304	PATTERSON, David G.
02211	OBIE, Matilda Carole Jackson	02305	PATTERSON, Eva
02212	OBIE, Michael	02306	PATTERSON, Glenda Jill
02213	OBIE, Milton Leland	02308	PATTERSON, Linda Lou Honeycutt
02216	OBIE, Sharon A.	02309	PATTERSON, Rose C.
02217	OBIE, Wallace E.	02312	PAUL, Chester James
02229	OLIPHANT, Mary Belle	02315	PEARSON, Eric William, Jr.
02230	OLIVER, Desmond Keith	02319	PEEVEY, Laurie Wade
02237	OLSON, Wilma Augusta	02327	PERKINS, Gary Merrill
02238	OLSON, Winifred Wilma Norris Scott	02330	PERKINS, Ruth I. Wilson
02242	O'NEILL, Franklin Lafayette	02331	PERRY, Shirley J. Honeycutt Martin
02243	O'NEILL, Herbert L.	02334	PETERS, Amy McCarthy Smoker
02244	O'NEILL, Linda Franks	02337	PETERS, Clarence
02251	ORCUTT, Harvey M.	02338	PETERS, Daraza Ann Stevens
02253	O'ROURKE, Daniel E.	02339	PETERS, Elizabeth R.
02254	O'ROURKE, Dennis Gary		
02258	O'ROURKE, Michael J.		
02261	O'ROURKE, Rena L. Reed		

Decl. No.	Name	Decl. No.	Name
02341	PETERS, Gloria F. Rogers Ruggiero	02423	QUINN, George H.
02344	PETERS, Lavonne C.	02424	QUINN, Glenn Edward, Sr.
02346	PETERS, Pearl Olive Downs	02425	QUINN, Helen Marie
02348	PETERS, Ralph Pete	02426	QUINN, Herman Ashley
02349	PETERS, Samuel	02427	QUINN, Irene E. Ferris
02350	PETERS, Susan Mae	02428	QUINN, Jacqueline
02354	PEVEY, Jack Herbert	02429	QUINN, James D., Jr.
02355	PEVEY, James Albert	02431	QUINN, Kenneth Maurice
02357	PHELPS, Calvin F.	02432	QUINN, Lillian Juanita
02358	PHELPS, George J.	02436	QUINN, Richard Wayne
02359	PHILLIPS, Albert	02437	QUINN, Robert Ray
02360	PHILLIPS, Daniel	02439	QUINN, William C.
02362	PHILLIPS, Gertrude Riecke	02440	QUIRINO, Blanche W.
02363	PHILLIPS, Lester	02442	RAGAIN, Clarann Curtice
02366	PILGRIM, Grant	02449	RAINERI, Delores M.
02367	PILGRIM, Maggie Jones	02450	RAINERI, Edna McCoy
02370	PITT, Joseph Henry	02452	RAKESTRAW, Earlene Fay Stevens
02384	PLUMMER, Daniel R.	02455	RAMBO, Joyetta Jane
02385	PLUMMER, Joyce Ruth Wilder	02460	RAMIREZ, Jean Marie Richards
02387	POLE, Helen Genevieve	02462	RAMOS, Jean D. Cooper
02390	PRATT, Ella Stevens Jamarillo	02467	RAYMOND, Maxine V. Lewis King
02394	PRICE, Mervin Vernon	02468	REECE, David Lowell, Sr.
02398	PROCTOR, James Dale	02470	REECE, Elsie Jean
02399	PROCTOR, James D., Jr.	02472	REECE, Frank J., Jr.
02401	PROCTOR, Jennie J. Harry	02476	REECE, Martha Melissa Williams
02405	PROCTOR, Llewellyn W.	02481	REED, Delores McCovey
02408	PUZZ, Dennis Stanley	02482	REED, Ellen M. Martin
02410	PUZZ, Henry	02484	REED, Fred Julius
02413	PUZZ, Paul Frank	02487	REED, Joseph
02415	QUELLA, Christine Young George	02488	REED, Lawrence, Sr.
02420	QUINN, Earl Lloyd	02489	REED, Lawrence, Jr.
02422	QUINN, Eunice Esther Richards	02496	REED, Minnie Harry
		02498	REED, Patricia Ann

Decl. No.	Name	Decl. No.	Name
02499	REED, William Ivan James	02624	RYERSON, Rosalind M. Griggs
02502	REEVES, Lena Fong	02626	RYERSON, Vera Cooper
02507	RICE, Victoria Crutchfield Grover	02627	SAATHOFF, Adeline
02526	RICHARDS, Greely	02628	SAATHOFF, Joan A.
02532	RICHARDS, Leslie L. Norris	02629	SAATHOFF, Wayne Roger
02547	RICHEY, Beverly Jean	02632	SAFFORD, James Lloyd
02551	RIECKE, Leslie	02638	SANDERSON, Benjamin Franklin, Jr.
02555	ROBERTS, Carrie Billy	02640	SANDERSON, Dale
02557	ROBERTS, Harold W.	02648	SANDERSON, Judy Ann
02558	ROBERTS, Kenneth A.	02649	SANDERSON, Kenneth
02559	ROBERTS, Rafey James	02652	SANDERSON, Leslie I. Erickson
02560	ROBERTS, Wilma Lucille	02653	SANDERSON, Lydia Pilgrim
02563	ROBINSON, Arnold L.	02660	SANDERSON, Wilford M.
02569	ROBINSON, Kenneth Vernon, Sr.	02661	SANDERSON, Wilford Melvin, Jr.
02575	ROBINSON, Roger Lee	02670	SAUNDERS, Mary Lou Phillips
02579	ROBINSON, Willa Mae	02671	SCHADE, Dorothy Ortha Childs
02580	ROBINSON, William Cecil Burton	02675	SCHAEFER, Margaret James
02595	ROLLINGS, Sylvia A. Johnnie	02677	SCHWENK, Louise Hodge
02596	RONK, Evelyn	02678	SCHWENK, Peter G.
02599	ROOK, Ruby L. Fox	02679	SCHWENK, Robley L.
02600	ROOK, Wesley Leroy	02680	SPOTT, Arnold John
02604	ROUBIDOUX, Bernice J.	02683	SCOTT, Chalmer William Dee
02605	ROUBIDOUX, Charlene	02693	SCOTT, Glenn J., Sr.
02609	ROUBIDOUX, Mary Elizabeth O'Rourke	02694	SCOTT, Harry Chester
02611	ROUSE, Della Phillips Lewis	02701	SCOTT, Kathleen
02618	RUGGIERO, Mary Phillips	02709	SCOTT, William John
02619	RUSSELL, Clara C.	02712	SEETON, Laura Safford McDaniel
02620	RUSSELL, Mary Jane Smoker	02725	SHAY, Rena Fong
02622	RUUD, Mollie Mae Oliver	02726	SHELTON, Ronald Leroy
02623	RYERSON, Frank Trefry		

Decl. No.	Name	Decl. No.	Name
02728	SHERMOEN, Lillian McCovey	02806	SMOKER, Marvin Eugene
02729	SHORT, Darlene Jane	02807	SMOKER, Mary Soffy Reed
02730	SHORT, Donald Newton	02808	SMOKER, Mildred Griffith
02731	SHORT, Eugene E.	02810	SMOKER, Sarah Mae George
02732	SHORT, Eugene L.	02825	SORRELL, Charles Lee
02733	SHORT, Viola J.	02826	SORRELL, Joseph R.
02734	SILLAWAY, Delores Dean Beebe	02827	SORRELL, Marlen A.
02737	SIMMS, Frederick H.	02829	SOVEREIGN, Connie L.
02738	SIMMS, Hector	02830	SOVEREIGN, Martha C. Pevey
02741	SIMPSON, Vivian Kay McCovey	02831	SOVEREIGN, Mary M. Bennett
02744	SIMS, Lillian Diane	02836	SPINOS, Lorraine G. Honeycutt
02747	SITTS, Delores May Orcutt	02837	SPORMAN, Evelyn M.
02752	SLOAN, Ardelle	02838	SPOTT, Alveretta Mae Oscar
02754	SLOAN, Tewila June	02839	STACONA, Charlene C.
02757	SMITH, David Allen	02844	STACONA, Marcelene Gensaw
02764	SMITH, Edmund M., Sr.	02851	STEELE, Edna D. Bean
02765	SMITH, Harriet Marian	02853	STEVENS, Bonnie Kaye
02766	SMITH, Helen Hall	02854	STEVENS, Donna Marie Short Koffman
02768	SMITH, Jeffrey Vern	02855	STEVENS, Earl Waymond
02769	SMITH, Joseph Perry, Jr.	02856	STEVENS, James
02775	SMITH, Marvin Lee, Jr.	02858	STEVENS, Laura Jean
02776	SMITH, Mary A. Robinson	02859	STEVENS, Leonard Hathaway
02778	SMITH, Melvin Leslie	02860	STEVENS, Leonard Lee
02779	SMITH, Mildred Mae Lewis	02861	STEVENS, Linda Louise
02780	SMITH, Nancietta D.	02863	STEVENS, Michael Earl
02782	SMITH, Phonola M. Van Pelt	02866	STEVENSON, Francine
02787	SMITH, Stephen Park	02867	STEVENSON, Geraldine Stevens
02790	SMITH, Virginia Marie Grubbs	02868	STEVENSON, Lynnette
02793	SMOKER, Charles Elmer, Sr.	02869	STEWART, Alfred James
02797	SMOKER, Edward Lewis	02870	STEWART, Alvin G.
02799	SMOKER, Eugene Charles		
02801	SMOKER, George Lee		

Decl. No.	Name	Decl. No.	Name
02876	STEWART, Ruby Marlene Lyons	02982	TENNISON, Dorothy E.
02878	STILL, Dorothy Lewis	02984	THAYER, Henrietta Joyce Lewis
02888	STOKES, Durwood David	02991	THOMAS, Marjorie Rene Franks Quinn
02889	STOKES, Melvin Morris	02993	THOMPSON, Archie
02891	STONE, Loretta Arlene Taylor	02996	THOMPSON, Randolph W.
02892	STRACENER, Sheila Jean Kinney	03009	TINSLEY, Ellen Louise
02894	STREETER, Barbara June Stevens	03014	TOMASINI, Leona A. Wilson
02897	STRINGER, Sharon Gayle Stevens Reece	03015	TOMASINI, Richard Allen
02900	SUNDBERG, Frederick L.	03016	TOMASINI, Rodney James
02905	SUNDBERG, Rose Joy Crutchfield	03019	TONDANI, Patricia E.
02906	SUNDSTROM, Ida Richardson Stevens	03021	TRACY, Joyce Marie
02910	SUPER, Patricia Ann Nix	03024	TRAUMANN, Delmar P.
02914	SWAIN, Mary Pauline Childs Cousins	03025	TRAUMANN, Joseph II
02917	SWANSON, Alvretta Jones	03026	TRAUMANN, Shirley M. Jones Kinder
02946	TAGGART, Elizabeth J. Owen	03028	TRIMBLE, Bonny Faye
02947	TAGGART, Arna Jean	03032	TRIMBLE, Ernestine R.
02951	TAGGART, Richard Harry	03034	TRIMBLE, Franklin W., Jr.
02960	TAYLOR, David Eugene	03041	TRIMBLE, Ramona McCovey
02962	TAYLOR, Dixie Lee Franks	03044	TRIMBLE, Rose Mae McCovey Scott
02967	TAYLOR, Lawrence L., Jr.	03045	TRIPP, Edith Lorena Griffin
02968	TAYLOR, Lawrence Oscar	03046	TRIPP, Frances Lewis Bow
02969	TAYLOR, Lorraine W.	03047	TRIPP, Harry Wallace
02974	TAYLOR, Ronald A.	03048	TRIPP, Sharon Lynn
02977	TAYLOR, Thelma Flester Spott	03049	TRIPP, William Michael
02978	TEMPLE, Ester M.	03052	TRIPPO, Delores Green
02980	TEMPLE, Lee Allen, Jr.	03060	TROMBETTI, Ora L. Owen
		03064	TURNER, Lois M.
		03066	TUTTLE, Virginia J. Bristol

Decl. No.	Name	Decl. No.	Name
03067	ULMER, Ronald Allan	03166	WHITE, Florence H.
03068	VALENZUELA, Donald D.	03167	WHITE, Francis C.
03080	VEGA, Marilyn Etta Kane	03168	WHITE, Hazel Ann
03091	WAGGONER, Myrtle Joan Roberts	03178	WHITTET, Cecilia Alma Charles
03092	WALKER, Cornelia Jean Natt	03181	WHITLATCH, Joan Murdock
03093	WALKER, Dorothy L. Puzz	03189	WILDER, Albert Walter, Sr.
03095	WALKER, John Eugene	03190	WILDER, Alton Eugene
03098	WALLIS, Cleo Dean	03191	WILDER, Carole Lee
03105	WARD, Lawrence Grant	03192	WILDER, Donald M.
03106	WARD, Michael Lane	03193	WILDER, Forest Lee
03109	WATKINS, Alice Faye	03195	WILDER, Harry Ferris
03113	WATKINS, Lionel H.L., Jr.	03196	WILDER, Irving D.
03115	WATKINS, Madeline A. Wilder	03198	WILDER, Kerry M.
03118	WATKINS, Sylvia Ann Mahach Lucero	03199	WILDER, Lena Cleveland
03119	WATSON, Michael Everett	03201	WILDER, Leonard C.
03120	WAUKELL, Nettie Harry	03202	WILDER, Lillian M. Ferris
03123	WEAVER, Dorothy Mae Griffin	03203	WILDER, Lillian Mae
03124	WEAVER, Jack David	03204	WILDER, Llewellyn Oliver, Sr.
03135	WEBSTER, Margaret C. Blake	03205	WILDER, Llewellyn Oliver, Jr.
03136	WEBSTER, Martha Griffin Remember	03207	WILDER, Ollie Mae Davis
03140	WEST, Alberta Lena Nix	03209	WILDER, Roy Matthew
03141	WEST, Gary Lee McLaughlin	03210	WILDER, Stanley M., Sr.
03142	WEST, Vicki Sue	03212	WILDER, Warren Whalen, Jr.
03143	WESTON, Katherine Reed	03213	WILDER, Warren Wayland, Sr.
03163	WHITE, Betty Ann McCovey	03217	WILLIAMS, Carol Ann Hodge
03164	WHITE, David Lewis	03219	WILLIAMS, Charles Vincent
03165	WHITE, Eunice A. Frey	03221	WILLIAMS, Desmond Turrold
		03223	WILLIAMS, Ethel Marie

Decl. No.	Name	Decl. No.	Name
03224	WILLIAMS, George Julius, Jr.	03331	BAKER, Constance Frye
03225	WILLIAMS, George James, Sr.	03337	BARTLETT, Pauline M. Knudsen
03227	WILLIAMS, Harrison	03339	BECK, Beatrice K. Boyd
03229	WILLIAMS, Martha Billy Burrell	03345	BELLAMY, Gary Storme
03231	WILLIAMS, Richard L.	03349	BEST, Doris Darlene
03235	WILLIAMS, Teresa	03360	BLAKE, Warren
03236	WILLIAMS, Thomas, Sr.	03365	BOWIE, Elmo Amos
03237	WILLIAMS, Thomas Wayne, Jr.	03366	BOWIE, Marvin Lee
03251	WILLSON, William W. Willington	03367	BRANTNER, Lowana
03254	WILSON, Barbara M. Rube Sutter Frame	03369	BROWN, Betty Winona John Bork
03259	WILSON, Darrell R.	03373	BROWN, Helen Van Pelt
03260	WILSON, Donald C.	03381	BURKE, Joanne Jeannette Markussen
03261	WILSON, Donald J.	03392	CARLSON, Violet Rose
03262	WILSON, Ella J.	03394	CARLSON, Willard Earl, Sr.
03263	WILSON, George Leroy	03407	COBB, Robert Louis
03265	WILSON, Joseph E.	03408	COBB, William Ray
03269	WILSON, Mary Ann Charles Peters	03418	COOLEY, Chester F., Jr.
03271	WILSON, Michael C.	03420	COOLEY, David Lyn
03277	WILSON, Sue Ann	03423	COOLEY, Dennis A.
03278	WILSON, Terry Lee	03425	COOLEY, Donald Lee, Sr.
03282	WINTER, Geraldine	03426	COOLEY, Evelyn Green
03287	WINTON, Clifford J.	03427	COOLEY, Gordon
03290	WINTON, Nellie James	03435	CRNICH, Gerald Bernard
03292	WINTON, Violet Nellie	03436	CRNICH, Ida Frye
03301	WOODS, Norma Jean Dowd	03437	CRNICH, William
03304	WORTH, Judith Lee	03439	DABBS, Margaret Eakes Tuma
03306	WRIGHT, Rowena Ada	03444	DEXTER, Lonna Lee Smith Cowell
03309	YOUNG, Bernard C., Jr.	03451	DOWNS, Herbert, Jr.
03311	YOUNG, Dora Jacobs Thompson	03457	DOYLE, Ann Downs Pratt Ferris Sipola
03312	YOUNG, Eugene	03460	EAKES, Richard Clark Dabbs
03313	YOUNG, Ida Mae		
03316	YOUNG, Samuel, Sr.		
03324	AFFLECK, Faye Bowis		
03330	AUER, Caroline		

Decl. No.	Name	Decl. No.	Name
03464	EINMAN, Leona L. Marks	03567	JOHNSON, Elmer Vernon
03467	ERICKSON, Axel V., Jr.	03573	JORDAN, Dorothy Ferris
03474	EXLINE, Jessie Jean	03575	KEISNER, Glenn
03476	FERRARI, Etta	03576	KEISNER, Henry J.
03478	FERRIS, Frank	03578	KEISNER, Ronald C.
03480	FIESTER, Edward	03579	KELLING, Edith
03481	FIESTER, John	03581	KEPARISIS, Mayme John King
03493	FRANKE, Donna Mae Green	03586	KING, Kenneth R., Sr.
03503	FRYE, Charlie W.	03589	KINNEY, Carson L.
03506	FRYE, Greely C.	03594	LAAM, John Henry
03515	GRAHAM, Ardith Kay Melvin	03596	LAMBERSON, Fred, Sr.
03524	GREEN, Dorothy D. Van Pelt	03597	LARA, Francis Marks
03530	GREEN, Theodore H., Jr.	03598	LARA, Josephine Jeannette
03532	GREEN, Virgil L., Sr.	03599	LARA, Margaret Marks
03533	GREENE, Janice M.	03601	LEE, Verda Markusen
03536	GRIFFITH, Gloria Jean	03604	LETSON, Juanita June King
03544	HARPST, Bernice Stokes	03605	LETSON, Larry Alan
03545	HATFIELD, Gail M. Keisner	03606	LETSON, William David
03546	HAVEN, Betty Lou Nix Erickson Koch	03608	LEWIS, Robert Calvin
03549	HEYER, Patricia Delores Markusen	03620	MARKS, Harvey Myron
03552	HOLSTER, Carmen M. Sanderson	03621	MARKUSSEN, Edwin Leroy
03554	HUNSINGER, Gail Lorraine Cobb Spott	03627	MELVIN, Charles John
03557	JAKE, Franklin, Sr.	03636	MILLER, Verona L. Green
03558	JAKE, Lester	03637	MILLIGAN, Helen Patricia
03561	JAKE, Theodore	03638	MOON, Carol Griffith
03563	JOHANNSEN, Lee Roy	03643	MOORE, Donald F.
03564	JOHN, Edward David	03646	MOORE, Glenn
03565	JOHN, Judith Marlene Keisner	03651	MOSER, Shane Laam
03566	JOHNSON, Colleen Estelle	03661	MUNCY, Wanda Zabel
		03668	MYERS, Richard L.
		03685	MCLAUGHLIN, David
		03691	NAJMON, Betty
		03694	NELSON, George
		03706	NORRIS, Clara
		03707	NORRIS, William Kent

Decl. No.	Name	Decl. No.	Name
03710	OLIVER, Eddie	03789	THOMAS, Cheryl
03716	PALLIN, Irene Mitchell		Kelling
	Nix	03791	THOMPSON, Johnnie
03717	PALACIOS, Betty L.		Leroy
	King	03793	THOMPSON, Robert C.
03718	PARKER, Elizabeth	03795	THOMPSON, William
03731	PYNE, Della Carlson	03800	THRASHER, Viola
03733	QUINN, Arlene Mae		Joyce Marks
03735	QUINN, Glenn Edward,	03803	TRULL, Georgiana
	Jr.	03813	VAN PELT, Dorothy A.
03739	REED, Peter J.	03816	VAN PELT, Henry, Sr.
03745	RICHARDSON, Ruth	03818	VAN PELT, Kendal T.
	Frye	03819	VAN PELT, Lloyd W.
03747	ROBERTS, Glen	03823	WALKER, Harry J.
03749	ROBERTS, Kenneth	03824	WALSH, Beverly Nix
03751	ROSS, Theresia E.		Nelson
03763	SHERMAN, Dale Ann	03828	WARD, Delores E. Frye
	Frye	03834	WHITEWATER,
03765	SINES, Martha E.		Richard
	Jefferson Cajune	03837	WILLIAMS, Dorothy
03767	SMITH, Harrison		M. Green Bellamy
03768	SMITH, Ora Elma Short	03839	WOOD, Annabelle
03772	SOUSA, Linda Marie		Fiester
	Boyd	03843	WRIGHT, Thana
03780	STUART, Virginia Lee		Thompson
03788	TAYLOR, Vivian L.	03845	YOUNG, Nellis Auer
	Kinney	03847	ZABEL, Frances Cajune
03789	THOMAS, Cheryl	03848	ZABEL, Larry
	Kelling	03849	VAN PELT, William
		03850	DOWNS, Lucille

Category 2 Subtotal: 1,245

Category 3: Plaintiffs who received summary judgment of entitlement by listing on "Attachment C" of the Trial Judge's Recommended Opinion of May 3, 1982 and who possess  $\frac{1}{4}$  Indian blood or more:

Decl. No.	Name	Decl. No.	Name
00073	ALLISON, Amy E. Gist	00900	GILLESPIE, Carolyn E.
00390	CANNON, Florence Gist		Gist
00644	DORNBACH, Mary Ellen Gist	00916	GIST, John C.
		00919	GIST, Robert P.

Category 3 Subtotal: 6

**Category 4:** Plaintiffs born after October 1, 1949 and before August 9, 1963 (children of a plaintiff listed in categories 1-3 above) who received summary judgment of entitlement by listing on "Attachment D" of the Trial Judge's Recommended Opinion of May 3, 1982.

Decl. No.	Name	Decl. No.	Name
00017	ABBOTT, Bonnie Estelle	00130	ANDREA, Stephen P.
00018	ABBOTT, Carol Lynn	00131	ANGELL, Bruce Stephen
00019	ABBOTT, Charlene Ruth	00133	ANGELL, Paul Douglas
00021	ABBOTT, Charles W., Jr.	00153	BACON, Robert Gaylon
00023	ABBOTT, Leonard Eugene	00155	BACON, Joseph Kenneth
00024	ABBOTT, Leslie Ann	00156	BACON, Raymond Edison
00026	ABBOTT, Steven James	00169	BAKER, Arthur Ray
00042	ALAMEDA, Ona Lee	00170	BAKER, Kelly Loreen
00043	ALARCON, Cesar Troy	00181	BASEY, Bonnie Brenda
00044	ALARCON, Jose Raul	00182	BASEY, Shontay Edith
00045	ALARCON, Linda Louise	00185	BATES, Bruce Eugene
00046	ALARCON, Maria Christina	00190	BATES, Ronald Arlen
00047	ALARCON, Maria Del Socorro	00191	BATES, Vicky Lynn
00049	ALBERS, Amos Leonard	00192	BATTERTON, Angela N.
00050	ALBERS, Clifford Leroy	00193	BATTERTON, Brenda M.
00051	ALBERS, Donna Marie	00195	BATTERTON, Melissa Ann
00052	ALBERS, Edward Wilson	00196	BATTERTON, Starlene
00054	ALBERS, Gary Lee	00206	BEAN, Edward A., Jr.
00056	ALBERS, Vioia Grace	00215	BEEBE, Carolyn Faye
00057	ALBERS, Wilfred, Jr.	00217	BEEBE, Deborah Lyn
00058	ALLEN, Adam Troy	00218	BEEBE, Elizabeth Ann
00074	ALLMAN, John Alvin	00225	BEEBE, Shirley May
00078	ALVARADO, Diane M.	00228	BELGARD, Louis Ronald
00090	AMES, Leonard Phillip	00229	BELGARD, Michel A.
00114	AMOS, Carolene Renee	00230	BELGARD, Stephen Lewis
00119	AMOS, Susan Darlene	00233	BENNETT, Alice Faye
		00235	BENNETT, Roger Dean

Decl. No.	Name	Decl. No.	Name
00253	BIRCHFIELD, Roy A., Jr.	00438	CHARLES, Lucille Jean
00254	BISBY, Billy Francis, Jr.	00442	CHARLES, Susie May
00255	BISBY, Lawrence Ray	00458	CHEROLIS, Michyl Jami
00274	BLOYD, Lorin Paul	00460	CHILDS, Elisa Pearl
00280	BONACCI, Anne Marie	00461	CHILDS, Kenneth C., Jr.
00283	BONACCI, Winifred M.	00483	CLOSE, Kathleen M.
00285	BOWERS, Debora M.	00488	COLLINS, Frank Douglas III
00286	BOWERS, Janet Rene	00493	CONNER, John Loren
00288	BOWERS, Patricia D.	00509	COOPER, Elaine Elise
00289	BOWERS, Susan Moria	00510	COOPER, Henry Clay IV
00290	BOWERS, William D. II	00521	COOPER, Sharon Lynn
00302	BRASHER, Kenneth Neil	00522	COOPER, Tama Ann
00304	BRASHER, Vicki Lynn	00529	COUSINS, Jennifer Lee
00305	BRASHER, Warren D.	00530	COUSINS, Jack Michael
00321	BROOKS, Rolinda Louise	00556	CRUTCHFIELD, Guylia Rose
00362	BURNS, Charley Eugene, Jr.	00557	CRUTCHFIELD, Lila May
00373	BUTRICK, Lavina Derdene	00560	CRUTCHFIELD, Theresa F.
00374	BUTTS, Brian Russell	00566	CURTICE, Barney Alva
00375	BUTTS, Dorsie Alan	00567	CURTICE, Beverly Joyce
00376	BUTTS, Mabel Sarah	00570	CURTICE, Linda Lee
00396	CARLSON, Walter Milton	00571	CURTICE, Roger Arthur
00398	CARR, Anthony Bruce	00573	CURTICE, Vernon Chadley
00399	CARR, Brian Eric	00580	DIAGNAULT, Joseph O.
00401	CARR, William Paul	00590	DAVIS, Arlene Christine
00406	CARROLL, Lawrence Henry	00594	DAVIS, Levi E.
00407	CARROLL, Lionel	00601	DAWSON, Julie Ann
00408	CARROLL, Marianne Rose	00602	DAWSON, Myr Lynn
00410	CASTON, Carey Lynn	00604	DAY, Robert Ralph, Jr.
00412	CASTON, Melvin Anthony	00610	DELGADO, Joe Christopher
00430	CHARLES, Ida Marie	00612	DELGADO, Rhea Margaret
00434	CHARLES, Larry Ross		
00435	CHARLES, Lawrence		
00436	CHARLES, Leona Mae		

Decl. No.	Name	Decl. No.	Name
00632	DONAHUE, Alice Jane	00728	FERRIS, Norine Rae
00633	DONAHUE, Charles K.	00729	FERRIS, Sandra Jean
00634	DONAHUE, Gladys Delores	00738	FIGUEROA, Dominic H.
00635	DONAHUE, James Johnson	00739	FIGUEROA, Floyd Kevin
00636	DONAHUE, John Elmer	00741	FIGUEROA, Raymond D. III
00637	DONAHUE, Lafayette R.	00744	FLETCHER, Lural Randy
00638	DONAHUE, Marjorie	00745	FLETCHER, Lyle Eugene
00639	DONAHUE, Phyllis Mae	00746	FLETCHER, Marianne
00640	DONAHUE, Tela Junita	00747	FLETCHER, Raymond L., Jr.
00646	DOWD, Frank Rodney	00755	FONG, Albert Oakhurst
00647	DOWD, Gary Mitch	00758	FONG, Melinda
00648	DOWD, Kathy Noreen	00759	FONG, Rhonda Lea Oakhurst
00650	DOWD, Rhonda Gayle	00760	FONG, Willa Marie
00651	DOWD, Rick Ronald	00769	FOSEIDE, Cleo Ann
00652	DOWD, Susan Shane	00770	FOSEIDE, Lorentz
00655	DOWNS, Frederick Lewis, Jr.	00772	FOSTER, Colleen Denise
00660	DOWND, Ralph E., Jr.	00777	FRANK, Anthony
00666	DRYDEN, Arletta Jean	00781	FRANK, Kenneth, Jr.
00668	DRYDEN, Dennis Dale	00783	FRANK, Pamela
00669	DRYDEN, Gary Lee	00785	FRANKLIN, David M.
00672	DUCKEY, Howard G., Jr.	00786	FRANKLIN, Diana Nadine
00674	DUGGAN, Julie	00787	FRANKLIN, John Andre
00676	DUGGAN, Steven Michael	00789	FRANKLIN, Paul Mattz
00677	DUNLAP, Cynthia Louise	00792	FRANKS, Harold Ivan
00678	DUNLAP, James Everett	00795	FRANKS, Mary Cheryl
00694	EISELE, Frank Ladue	00799	FRANKS, Robert
00708	ERVIN, Keith Craig	00800	FRANKS, Rodney Gerald
00709	ERVIN, Kim Renae	00805	FRENCH, Daniel Arthur
00710	ESLICK, Barbara Jean	00812	FRYE, David Julius
00711	ESLICK, Leslie Marie	00826	FULWIDER, Diane Lynn
00712	ESLICK, Martha Elizabeth		
00726	FERRIS, Dale Raymond		
00727	FERRIS, Elaine Diana		

Decl. No.	Name	Decl. No.	Name
00828	FULWIDER, William Derrel, Jr.	00917	GIST, Mary Mae
00831	GALLACCI, Eugene Avery	00918	GIST, Myrna Kay
00832	GALLACCI, Cathy Rae	00920	GONZALEZ, Marjorie
00833	GALLACCI, John Michael	00923	GRADY, William K. Moore
00845	GARCIA, Irene	00924	GRADY, Timothy Hall
00848	GENSAW, Anna Belle	00927	GRAVES, Sheldon Eugene
00851	GENSAW, Carroll Lawrence	00932	GREEN, Dorene
00853	GENSAW, David Leroy	00948	GRIFFIN, Charlene M.
00854	GENSAW, Evelyn Marie	00950	GRIFFIN, Donna Marleen
00855	GENSAW, Helen Viola	00951	GRIFFIN, Elsie A.
00857	GENSAW, Joseph William	00952	GRIFFIN, Fred Lee
00861	GENSAW, Lorna Marie	00960	GRIFFIN, Stanley S. III
00863	GENSAW, Margaret Ann	00965	GRIFFITH, Earl III
00865	GENSAW, Oscar Taylor, Jr.	00968	GRIFFITH, Merle
00866	GENSAW, Peggy Sue	00995	HAAS, Cheryl Susan
00871	GENSAW, Ronald Rae	01039	HARDER, Larry
00874	GENSAW, Sandra Luanne	01049	HARRISON, Diane Marie
00875	GENSAW, Tamara Lynette	01051	HARRISON, Leroy James
00878	GENSAW, William E. III	01054	HARRISON, Thomas F., Jr.
00879	GEORGE, Benjamin E.	01074	HEINER, Tedra Lee
00882	GEORGE, Gail Duane	01075	HEINER, Judith Rae
00883	GEORGE, Gale Le Ann	01078	HEITMAN, George Howard
00884	GEORGE, Laura Elaine	01080	HELKER, Yvonne
00885	GEORGE, Linda Pearl	01081	HELLMAN, Eva Marcia Matilton
00887	GEORGE, Michael Gail	01082	HELLMAN, Merv Anthony
00890	GIDDINGS, Delia A.	01083	HELLMAN, Michael W.
00892	GIDDINGS, Ralph M., Jr.	01097	HENDRIX, Linda Ann
00910	GIST, Beth Marie	01101	HENRY, Elliott Milton, Jr.
00911	GIST, Frank Gray, Jr.	01103	HENRY, Frank Aaron
00913	GIST, Gordon Leroy	01107	HENRY, Madeline Lorraine
00915	GIST, John Anthony	01108	HENRY, Tanya Lynn

Decl. No.	Name	Decl. No.	Name
01111	HICKEY, Brian	01326	JONES, Larry Lee
01120	HODGE, Andrew Eric	01327	JONES, Letitia Faye
01123	HODGE, Cynthia Marie	01332	JONES, Shelly Maxine
01124	HODGE, Deborah Jean	01333	JONES, Shirley Annie
01128	HODGE, Kenneth Mark	01334	JONES, Terri Sue
01129	HODGE, Kevin Mark	01336	JONES, Winfred Wayne
01130	HODGE, Kipp Roxanne		Johnny
01133	HODGE, Lori Lynn	01358	KANE, Lana Loreen
01135	HODGE, Otto, Jr.	01359	KANE, Lisa Anne
01137	HODGE, Paula Lynn	01365	KEENE, Cynthia M.
01140	HODGE, Roberta Lynn	01368	KEISNER, Delmer M.,
01144	HOFFMAN, Sandra		Jr.
	Diane	01369	KEISNER, Edward Carl
01145	HOFFMAN, Valerie D.	01370	KEISNER, Eunice
01146	HOFFMAN, Walter P.,		Marie
	III	01371	KEISNER, Floyd James
01150	HOLZHAUSER,	01372	KEISNER, Frederick A.
	Richard J.	01374	KEISNER, Sandra Dean
01151	HOLZHAUSER, Ronald	01378	KERWIN, Deborah Ann
	Lee	01379	KERWIN, Keith L.
01195	HOWARD, Michael	01380	KERWIN, Michael Gene
	Leroy	01390	KINDER, Daniel Stuart
01197	HOWARD, Richard B.,	01391	KINDER, Jimmie V.
	Jr.	01392	KINDER, Lorene Lynn
01200	HUFFMAN, Leanne	01393	KINDER, Martin A., Jr.
	Mae	01395	KINDER, Robert Lee
01201	HUFFMAN, Leonard	01409	KINNEY, Harold
	Lee		Anthony
01209	HUNSUCKER, Gerald	01410	KINNEY, Leslie Eugene
	B., Jr.	01445	LA FRANCHI, Edwina
01211	HUNSUCKER, Robert		F. Zane
	E.	01454	LARA, Dale Thomas
01228	IPINA, Daniel Efrain	01455	LARA, Franklin Wayne
01229	IPINA, David Javier	01456	LARA, Lorraine Lynn
01231	ISKRA, Jeanette Marie	01457	LARA, Peter Harry
	Flores	01458	LARA, Walter James,
01233	ISKRA, Karen Lynn		Jr.
01244	JAMES, Joanie	01460	LARA, William Bennett
01254	JAMES, Sherry Kay	01477	LEWIS, Carolyn Marie
01312	JONES, Christee	01479	LEWIS, Cheryl Denise
	Annette	01482	LEWIS, Deborah Ann
01315	JONES, Clifton N.	01487	LEWIS, Eugene G.
01318	JONES, Edith Mae	01489	LEWIS, Franklin D., Jr.
01320	JONES, Harold Dale	01490	LEWIS, Gary Dean

Decl. No.	Name	Decl. No.	Name
01501	LEWIS, Michael Wayne	01676	MCDONALD, Floyd Jay
01503	LEWIS, Pamela Jean	01678	MCDONALD, Jill Pitt
01506	LEWIS, Vernon Leroy		Hixon
01510	LILLY, Robert Lee	01681	MCDONALD, Rita
01514	LINDGREN, Axel Roderick III	01683	MCGAHUEY, Darla Jean
01516	LINDGREN, Connie Kay	01684	MCGAHUEY, Robert Lee
01519	LINDGREN, Kelly Jean	01686	MCGAHUEY, Suzan Rea
01520	LINDGREN, Kris K.C.	01698	MCKEE, Lori Jean
01521	LINDGREN, Lindy Charles	01706	MCKINNON, Dennis Lee
01522	LINDGREN, Parris Edward	01708	MCKINNON, Gerald
01572	LYONS, Linda Lou	01709	MCKINNON, Loren
01575	LYONS, Stacey Jerome	01715	MCKINNON, Rodney Lane
01606	MCCONNELL, Jeffrey P.	01716	MCKINNON, Rosemary
01607	MCCONNELL, Karla S.	01718	MCKINNON, Walter C. III
01610	MCCONNELL, Michael D.	01720	MCLAUGHLIN, Clifford
01618	MCCOVEY, Beatrice V.	01721	MCLAUGHLIN, Deanna Rae
01620	MCCOVEY, Carol Lynn	01722	MCLAUGHLIN, Doyle Ray
01626	MCCOVEY, Deborah Lyn	01724	MCLAUGHLIN, Floyd M.
01637	MCCOVEY, Jackie LaVerne Wallis	01725	MCLAUGHLIN, Joyce M.
01638	MCCOVEY, James Lee	01729	MC LAUGHLIN, Renee F.
01639	MCCOVEY, Janice R.	01730	MC LAUGHLIN, Virgil
01640	MCCOVEY, Jene L.	01732	MC NEAL, Cheryl Rae
01642	MCCOVEY, Joyce J.	01736	MC NEAL, Janet M.
01643	MCCOVEY, Julie Diane	01739	MC NEAL, Rocky
01645	MCCOVEY, Lana Marie	01740	MC NEAL, Russell W.
01646	MCCOVEY, Laura Ann	01741	MC NEAL, Susan A.
01649	MCCOVEY, Lena Marie	01742	MC NEAL, Vernon Lee
01651	MCCOVEY, Loren G.	01743	MC NEAL, Vickie C.
01655	MCCOVEY, Nancy Lynn	01744	MC NERTNEY, Bambi L.
01658	MCCOVEY, Richard B.		
01660	MCCOVEY, Ronald A. J.		
01663	MCCOVEY, Terry Lena		
01665	MCCOVEY, Viayn Dene		
01670	MCCOVEY, William III		

Decl. No.	Name	Decl. No.	Name
01746	MC NERTNEY, Jack I., Jr.	01850	MARTINEZ, Denise L.
01749	MC NERTNEY, Robin R.	01851	MARTINEZ, Joseph A.
01750	MC QUILLEN, Barbara	01855	MASTEN, Alena Lu
01752	MC QUILLEN, David A. Oliver	01864	MASTEN, Debra Nan
01753	MC QUILLEN, Elizabeth	01866	MASTEN, Everett W., II
01755	MC QUILLEN, James J., Jr.	01867	MASTEN, Everettta L.
01756	MC QUILLEN, Mary L.	01868	MASTEN, Gregory Kim
01764	MACNEILL, Daniel	01871	MASTEN, Catherine Kay
01765	MACNEILL, Frank	01872	MASTEN, Patrick Dale
01767	MACNEILL, Irving	01875	MASTEN, William M., Jr.
01768	MACNEILL, John Roderick	01877	MASTEN, Pamela Kay
01770	MACNEILL, Robert	01879	MATA, Lawrence W.
01772	MAGEE, Jacqueline Ethel	01880	MATA, Marianne F.
01773	MAGEE, Jeanette Lynne	01883	MATA, Sharlene Kay
01776	MAGEE, Jill Andrea	01890	MATILTON, Steven Dale Smith
01777	MAGLIO, Melvin B.	01932	MENDEZ, Anita Lee
01783	MALONEY, David Wayne	01933	MENDEZ, Blake Henry
01784	MALONEY, Doris Jean	01934	MENDEZ, Carol Lyn
01797	MARKUSSEN, Elizabeth A.	01947	MEYER, Ronna Ronnelle
01798	MARKUSSEN, Gary Lee	01957	MINARD, Brenda Lee
01807	MARTIN, Antone F., Jr.	01959	MINARD, Duane Alan
01808	MARTIN, Cheryl Lynn	01973	MITCHELL, Louis Dale
01809	MARTIN, Christopher S.	01977	MITCHELL, Tamny C.
01831	MARTIN, Lori Ann	01980	MIZNER, Harold R., Jr.
01836	MARTIN, Marvin Cody	02000	MONTES, Dolores Ellen
01839	MARTIN, Nadine A.	02003	MONTES, Marcia Lee
01842	MARTIN, Rickey Gene	02004	MONTES, Pauline
01843	MARTIN, Ricky Lee	02007	MOON, Arnez Agnes
01844	MARTIN, Steven Dean	02011	MOON, Darrell Kenneth
01846	MARTIN, Virgil Dean, Jr.	02013	MOON, Earl Lealie
		02014	MOON, James III
		02015	MOON, Karen Dee
		02017	MOON, Wendell W.
		02021	MOORE, Grover Ronald
		02032	MOORE, Reginald Gale
		02034	MOORE, Verna Dean
		02046	MOOREHEAD, Holly Lynn

Decl. No.	Name	Decl. No.	Name
02057	MOOREHEAD, Roger Lee	02147	NORRIS, David L.
02060	MOOREHEAD, Virgil D.	02148	NORRIS, Debora Arlene
02062	MORGAN, Anna Marie	02149	NORRIS, Eldred Willis, Jr.
02063	MORGAN, Tracy Gail	02152	NORRIS, Eldrene Kay
02064	MORGAN, Garland L., Jr.	02154	NORRIS, Gail Joann
02065	MORGAN, Janet Lucille	02155	NORRIS, Jannine Marie
02067	MORRIS, Allan Lane	02158	NORRIS, Laverne Elaine
02068	MORRIS, Brian Jay	02162	NORRIS, Letha Louise
02071	BAKER, Fawn Alana Morris	02163	NORRIS, Linda Dealva
02072	MORRIS, Frank William	02164	NORRIS, Lynette L.
02075	MORRIS, Michael Lance	02165	NORRIS, Margaret
02081	MOSELEY, Leonard F.	02166	NORRIS, Marilyn C.
02082	MOSELEY, Mark Alan	02168	NORRIS, Melvourneen L.
02089	MYERS, Andrea Jean	02169	NORRIS, Patrick J.
02092	MYERS, Gilbert John	02170	NORRIS, Peggy Sue
02093	MYERS, Sylvester L.	02173	NORRIS, Sally Anne
02095	NAPOLEON, Connie Gail	02178	NOVOA, Arnold A.
02096	NAPOLEON, Deborah D.	02179	NOVOA, David Lazaro
02098	NAPOLEON, Lewis R.	02180	NOVOA, Donna Mae
02100	NAPOLEON, Rebecca Sue	02181	NOVOA, Gary Leroy
02102	NATT, Dawn Valerie	02182	NOVOA, Kim Sue
02113	NELSON, Debra Lynn	02183	NOVOA, Lewis, Jr.
02114	NELSON, Diane Elaine	02186	NOVOA, Ricky L.
02116	NELSON, Ida Elaine	02187	NOVOA, Steven W.
02117	NELSON, Linda Marie	02195	NUTTALL, Angela M.
02118	NELSON, Richard Dale	02197	NUTTALL, Mary Ellen
02119	NELSON, Rosalee Jean	02198	NUTTALL, Wanda Kay
02120	NELSON, Yvonne Carol	02202	OBIE, Darrel D.
02121	NESBITT, Dorothea E.	02209	OBIE, Lisa Gaye
02123	NESBITT, Lori Lee	02210	OBIE, Lynn Ann
02124	NESBITT, Patricia R.	02219	OFFIELD, Elaine C.
02131	NIX, Denise Loreen	02220	OFFIELD, Vincent R.
02132	NIX, Dennis Gale	02221	OFFINS, Arnold Wade
02135	NIX, Katherine Anne	02223	OFFINS, Laura Lee
02136	NIX, Lawrence Daniel	02224	OFFINS, Morneen M.
02145	NORRIS, Colleen S.	02227	OLIPHANT, Jimmy D.
		02228	OLIPHANT, John Patrick
		02232	OLSON, Jayne Amore
		02233	OLSON, Jenell Renee

Decl. No.	Name	Decl. No.	Name
02250	ORCUTT, Debra Mae Sitts	02514	RICHARDS, Denise L.
02252	O'ROURKE, Carole N.	02537	RICHARDS, Michael G.
02286	OWEN, Gerald Michael	02548	RIECKE, Annette C.
02303	PATAPOFF, Patrick D.	02549	RIECKE, Elise Ann
02316	PEARSON, Eric W. III	02550	RIECKE, Jeanne Marie
02317	PEARSON, Karen E.	02552	RIECKE, Leslie Mina
02318	PEARSON, Ranold Matt	02553	RIECKE, Michelle L.
02336	PETERS, Christopher H.	02554	RIECKE, Paul Joseph
02342	PETERS, Kathleen E. Spott	02561	ROBERTSON, Shelley M.
02343	PETERS, Laura Bell	02591	ROLLINGS, Ester M.
02352	PETERS, Tony Ray	02592	ROLLINGS, John E., Jr.
02392	PRESTON, Melody Carol	02593	ROLLINGS, Randy Ray
02400	PROCTOR, Jan Nathan	02594	ROLLINGS, Roney Ray
02402	PROCTOR, Jonathan Ray	02606	ROUBIDOUX, Dariene Marie
02403	PROCTOR, Judith Dee	02607	ROUBIDOUX, Howard Ronald
02417	QUINN, Alan Dale	02608	ROUBIDOUX, Kenneth Alfred
02418	QUINN, Danny Ray, Jr.	02610	ROUBIDOUX, Ricky Allen
02430	QUINN, Janie Lorraine	02617	ROWLAND, Sunny Loree
02433	QUINN, Lillian M.	02630	SAFFORD, Delia C.
02435	QUINN, Norman Maurice	02631	SAFFORD, James F.
02438	QUINN, Susan Irene	02633	SAFFORD, John Albert
02441	RAGAIN, Ariene Gail	02634	SAFFORD, Laura E.
02443	RAGAIN, Marlene Ann	02636	SANDERS, Daniel E.
02444	RAGAIN, Mitchell Dale	02637	SANDERS, Larry David
02453	RAKESTRAW, Robert Allen, Jr.	02641	SANDERSON, Dale, Jr.
02457	RAMIREZ, Marie Delfina	02642	SANDERSON, Dariene
02459	RAMIREZ, Georgiana	02643	SANDERSON, Deborah L.
02483	REED, Ethel Mae	02644	SANDERSON, David L.
02490	REED, Lennie Dee	02645	SANDERSON, Dennie K.
02492	REED, Martina Irene	02646	SANDERSON, Deiores I.
02494	REED, Melva Jean	02650	SANDERSON, Kenneth Gaylon
02497	REED, Ronald	02651	SANDERSON, Leonard B., Jr.
02498	REED, Sherrie Lee		
02500	REED, William Laine		

Decl. No.	Name	Decl. No.	Name
02654	SANDERSON, Marilyn L.	02842	STACONA, Chris Lindy
02656	SANDERSON, Patricia L.	02846	STACONA, Ronald McKie
02657	SANDERSON, Peggy J.	02847	STACONA, William Curtis
02658	SANDERSON, Sherry May	02862	STEVENS, Melva Rae
02687	SCOTT, Dennis Rocky	02877	STILL, Clarence Lee
02692	SCOTT, Glenn James, Jr.	02890	STONE, David Lee
02697	SCOTT, Jennie Jeannette	02895	STREETER, Ronald Zane Stevens
02699	SCOTT, Johnny Martin	02896	STRINGER, Corinne Lynn
02700	SCOTT, Joseph Danny	02899	SUNDBERG, Daniel E.
02702	SCOTT, Lisa Annette	02901	SUNDBERG, Garth R.
02704	SCOTT, Marilyn Kay	02902	SUNDBERG, Lisa Gay
02705	SCOTT, Mark Anthony	02903	SUNDBERG, Mark Jonathan
02710	SCOTT, William Randy	02904	SUNDBERG, Marshall A.
02735	SILLAWAY, Linda Jean	02908	SUPER, Keg Randall
02736	SIMMS, Amanda Sue	02909	SUPER, Kimberly Ann
02739	SIMPSON, Cindy Lee Lamphier	02911	SUPER, Thaddeus Zane
02742	SIMS, Darrell Dean	02912	SWAIN, Donald
02745	SITTS, Beverlee Ann	02913	SWAIN, George A., Jr.
02748	SITTS, Jacqueline M.	02916	SWAIN, Sandra Lee
02753	SLOAN, Clifford W.	02948	TAGGART, Gary Richard
02755	SMITH, Constance E.	02950	TAGGART, Lorraine Lyn
02756	SMITH, Dale Arnold	02966	TAYLOR, Larette M.
02758	SMITH, Delmagene E.	02986	THAYER, Jennifer M.
02759	SMITH, Denver E., Jr.	02987	THAYER, Michael Lewis
02760	SMITH, Donald Everett	02988	THAYER, Patricia Sue
02762	SMITH, Dwane Evans	02989	THAYER, Vickie Diane
02770	SMITH, Karen Lea	02990	THAYER, William Dean, Jr.
02773	SMITH, Linda Marie	02994	THOMPSON, Archie Curtis, Jr.
02774	SMITH, Lynelle Kay	02995	THOMPSON, Debra Kay
02781	SMITH, Paul A.	02997	THOMPSON, Randy Lee
02784	SMITH, Rosalee Ann Buckley		
02794	SMOKER, Charles E., Jr.		
02796	SMOKER, Crystal Leen		
02840	STACONA, Charlie J.		
02841	STACONA, Cheryl Lynn		

Decl. No.	Name	Decl. No.	Name
02999	THOMPSON, Sherry Rae	03088	WAGGONER, Dennis
03001	THOMPSON, Trudy Jean	03089	WAGGONER, Ellis, Jr.
03002	THOMPSON, Valerie Ann	03090	WAGGONER, Leland Wayne
03003	THOMPSON, Wilford M.	03094	WALKER, Joannie Jo
03020	TRACY, George Ira	03096	WALKER, Larry Layne
03023	TRACY, Sherri Lynn	03097	WALLIS, Bill B., Jr.
03027	TRIMBLE, Alice M.	03099	WALLIS, Ladene Rae
03029	TRIMBLE, Carla A.	03100	WALLIS, Teri Lee
03031	TRIMBLE, Donald E., Jr.	03101	WALTERS, Donald L.
03036	TRIMBLE, Frederic J., Jr.	03102	WALTERS, Russell H.
03037	TRIMBLE, Gregory P.	03103	WALTZ, Virginia N.
03039	TRIMBLE, Margaret Lynn	03125	WEAVER, Jill Ann
03040	TRIMBLE, Melinda Mae	03130	WEBSTER, Albert W.
03042	TRIMBLE, Rebecca	03131	WEBSTER, Carol Ann
03043	TRIMBLE, Rodney Gail	03132	WEBSTER, Dale Walter
03050	TRIPPO, Cameron Efrim	03133	WEBSTER, Janet Marie
03051	TRIPPO, Charles Angelo	03134	WEBSTER, Lloyd Russell
03053	TRIPPO, Monica Joleen	03170	WHITE, Karen Marie
03054	TRIPPO, Vernon, Jr.	03174	WHITE, Shelly Rae
03070	VALENZUELA, Paula J.	03180	WHITLATCH, Anita Rae
03071	VALENZUELA, Stephen Larry	03182	WHITLATCH, Judith Ann
03075	VAN VOLtenBURG, Bill Wayne	03183	WHITLATCH, Kathryn Susan Jane
03078	VEGA, Douglas	03184	WHITLATCH, Laurance H.
03079	VEGA, Kelly	03185	WHITLATCH, Mary Joan
03081	VEGA, Michael Anthony	03186	WHITLATCH, Pamela Jean Frances
03082	VEGA, Valaria Jo	03197	WILDER, Kenneth Ray
03083	VEGA, William Patrick	03218	WILLIAMS, Charles Juke
03087	WAGGONER, Andrea Lee	03222	WILLIAMS, Elise Kay
		03226	WILLIAMS, Gregory M.
		03230	WILLIAMS, Matthew Cary
		03233	WILLIAMS, Stormi Dawn
		03248	WILLSON, Preston G.

Decl. No.	Name	Decl. No.	Name
03250	WILLSON, Thomas E.	03472	ESPINOZA, Marta M.
03252	WILSON, Alberta M.	03475	EXLINE, Kevin P.
03253	WILSON, Barbara A.	03477	FERRIS, Dan
03255	WILSON, Carl DeForest, Jr.	03479	FETTERS, Brenda Colleen Muller
03256	WILSON, Carol Ann	03494	FREDERICKSON, Lynn Ann
03264	WILSON, Ina Mae	03504	FRYE, Cynthia J.
03273	WILSON, Robert C.	03509	FRYE, Luana Kay
03274	WILSON, Samuel Neil	03511	FRYE, Vina Nona
03275	WILSON, Shaun Laurette	03512	FRYE, Walter W.
03279	WILSON, William L.	03569	JOHNSON, Linda Dariene
03294	WOLFE, Arlene Maree	03571	JOHNSON, Mark Keith
03295	WOLFE, John Henry	03572	JOHNSON, Wayne Ray
03296	WOLFE, Larry James	03574	JORDAN, Nancy Louise
03297	WOLFE, Lorie Jeanne	03616	LOWE, Curry Price
03298	WOLFE, Wanda Rose	03639	MOON, Douglas Steven
03299	WOODS, Dawn Dee	03687	MCLAUGHLIN, Katherine M.
03300	WOODS, Lanus Doyle	03688	MCLAUGHLIN, Lonnie
03302	WOODS, Vickie Lynn	03689	MCLAUGHLIN, Stanton
03332	BAKER, Lance W.	03695	NELSON, Nelda
03363	BORK, Elizabeth Winona	03696	NELSON, Neis
03364	BORK, Etta Rose	03702	NELSON, Tawnee
03375	BROWN, Nieca Dawn	03734	QUINN, Gary L.
03377	BROWN, Yvonne Marie	03743	RICHARDSON, Barry A.
03393	CARLSON, Willard Earl, Jr.	03744	RICHARDSON, Judith A.
03395	CARLSON, Yvonne Delia	03753	SAMPELS, Pennie L. Ward
03429	COSCE, Debra	03758	SCOTT, Sheri
03441	DAIGLE, Vera Lynn Moon	03773	SPOTT, Nellie Lynn
03482	DOWNS, Janice	03774	SPOTT, Seeley Earl
03484	DOWNS, Marilyn	03776	SPOTT, Valdemar Lewis
03489	EAKES, Mary Jane	03796	THRASHER, Bobby Bert, Jr.
03461	EAKES, Robert	03798	THRASHER, Garland D.
03462	EAKES, Theima Jean		
03468	ERICKSON, Dawn Adaire		
03469	ERICKSON, Lavarr		

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Decl. No.	Name	Decl. No.	Name
03799	THRASHER, Kimberly L.	03815	VAN PELT, Henry, Jr.
03804	TUMA, Jeffrey Allen	03820	VAN PELT, William
03805	TURNER, Brady Wayne	03829	WARD, Lewis B.
03808	TURNER, Danny	03832	WHITEHURST, Anne Jeannette Carlson
03810	UTTERBACK, Catherine D.	03840	WOOD, Gary Dennis
03814	VAN PELT, Gaylee Jean		Category 4 Subtotal: 782

Category 5: Plaintiffs born on or after August 9, 1963 (children of plaintiffs in categories 1-3 above) who received summary judgment of entitlement by listing on "Attachment E" of the Trial Judge's Recommended Opinion of May 3, 1982:

Decl. No.	Name	Decl. No.	Name
00053	ALBERS, Ernest Ray	00680	ECHOLS, Agnes Josephina
00121	AMOS, Tammy Rae	00681	ECHOLS, David Lee, Jr.
00183	BATES, Allen Roger	00779	FRANK, Gayle
00197	BAUER, Frederick P.	00794	FRANKS, Jewell Crystal
00281	BONACCI, Lynne Marie	00841	GALYEAN, Kimberly
00306	BRETT, Connie Lynn	00852	GENSAW, Curtis Floyd
00316	BROOKS, Melissa Ruth	00858	GENSAW, Kathleen Rose
00322	BROOKS, Serena Michelle	00859	GENSAW, Leo George
00323	BROOKS, Theresa Ann	00860	GENSAW, Lori Ann
00326	BROWN, Anthony Jack	00867	GENSAW, Penny Janinne
00331	BROWN, Christen Martha	00870	GENSAW, Raymond Giant, Jr.
00382	CALDWELL, Julie Deanne	00872	GENSAW, Samuel Lloyd, Jr.
00411	CASTON, Kelley Marie	00876	GENSAW, Teena Denise
00443	CHARLES, Timothy Lee	00944	GREEN, Ronald
00465	CHRISTENSEN, Ellen Marie	00962	GRIFFIN, Warren Preston
00482	CLOSE, Eddie Lee	00963	GRIFFIN, Donalene
00485	CLOSE, Raymond Neil	01052	HARRISON, Michael J.
00490	COMBS, Joyce Darlene	01099	HENDRIX, Theresa L.
00515	COOPER, Leanne Elizabeth	01109	HENRY, Vicki Lee
00516	COOPER, Mary Lucile	01114	HICKEY, Mark Albert
00524	COOPER, Wayne Amos, Jr.	01121	HODGE, Angela Suzette
00553	CRUTCHFIELD, Carleen Loretta	01131	HODGE, Leah Mae
00561	CRUTCHFIELD, Tracy Lee	01208	HUNSUCKER, Geneva Jane
00593	DAVIS, George Hampton	01302	JOHNSON, Julie Ann
00595	DAVIS, Lorriene Jean	01335	JONES, Traci Lee
00599	DAVIS, Teri Vada	01447	LA FRANCHI, Elverna L.
00656	DOWNS, Lorne Eddie	01492	LEWIS, Gerald Allen
00675	DUGGAN, Kerry	01498	LEWIS, Kayla Marie
		01502	LEWIS, Nora Jean

Decl. No.	Name	Decl. No.	Name
01535	LOGAN, Florenia Fay	02740	SIMPSON, John D. II
01622	MCCOVEY, Chlena	02746	SITTS, Bobbi Jean
01624	MCCOVEY, Daryl Dele	02763	SMITH, Edmund
01625	MCCOVEY, Dawn		Milton, Jr.
01644	MCCOVEY, Kathy Ann	02767	SMITH, Janet Marilyn
01652	MCCOVEY, Margaret L.	02795	SMOKER, Cheryl Renee
01654	MCCOVEY, Mona Lena	02843	STACONA, Debra
01656	MCCOVEY, Nicholas C.		Marcia
01734	MCNEAL, Elmer H., Jr.	02845	STACONA, Mark
01774	MAGEE, Jeraldine		Anthony
	Phyllis	02872	STEWART, Gerald E.
01794	MARKUSSEN, Albert	02875	STEWART, John
	A., III		Jerome
01837	MARTIN, Mary Lynn	02949	TAGGART, Gregory
01857	MASTEN, Bradley C.		Allen
01897	MATTZ, David Lee	02959	TAYLOR, Darin Eugene
02041	MOOREHEAD, Everett	02985	THAYER, James
	F.		Andrew
02069	MORRIS, Curtis Dale	03000	THOMPSON, Timothy
02073	MORRIS, Gary D., Jr.		J.
02080	MOSELEY, Kathy Lynn	03137	WEBSTER, Roy Lee
02104	NATT, Donald C., Jr.	03138	WEBSTER, Sandra
02144	NORRIS, Brian Eugene		Lynn
02206	OBIE, Lawrence Neal	03232	WILLIAMS, Sean
02226	OLIPHANT, Janice M.		David
02234	OLSON, Jill Suzette	03247	WILLSON, Patrick W.
02259	O'ROURKE, Michael	03286	WINTON, Brenda Renee
	John II	03368	BROWN Arthena
02416	QUELLA, Dwayne		Muriel
	Edward	03370	BROWN, Charles
02463	RAMOS, Teresa Jayne		Marion
02469	REECE, David L., Jr.	03372	BROWN, Earl Ira
02473	REECE, Frank J. III	03376	BROWN, Roy Edward
02474	REECE, Janine Melissa	03390	CARLSON, Forrest Lee
02475	REECE, Jeanette Irene	03443	DE LA ROSA, Jonny
02541	RICHARDS, Tonya	03455	DOWNS, Traci Marie
	Lynn	03505	FRYE, Dixie Lee
02656	SANDERSON, Richard	03510	FRYE, Malissa Marie
	L.	03527	GREEN, Lorene
02708	SCOTT, Wallace	03528	GREENE, Penny L.
	Franklin Roy	03534	GREENE, Naomi M.
02716	SEVERNS, Edmund	03548	HEYER, Alan Vernon
	Eugene	03550	HEYER, Steven Patrick

Decl. No.	Name	Decl. No.	Name
03551	HICKEY, Daniel	03766	SMITH, Bryan Milton
03640	MOORE, Annette	03807	TURNER, Carrie Ann
03730	PYNE, Barbara Ann		

Category 5 Subtotal: 128

**Category 6:** Plaintiffs whose motions for summary judgment of entitlement were denied without prejudice, or who filed duplicate claims, or who defaulted, or who claim to be non-Indian heirs, etc. (none dismissed):

Decl. No.	Name	Decl. No.	Name
00032	ADAMSON, Cheryl Lynn	00096	AMMON, Chauncy Leroy, Jr.
00033	ADAMSON, Darrell Lee	00097	AMMON, Daniel Earl
00035	AKERS, Evie Patricia McClung	00098	AMMON, Earl Robert
00038	ALAMEDA, Henry Clinton, Jr.	00099	AMMON, Erick Charles
00039	ALAMEDA, Kari Dawn	00100	AMMON, Frank Leslie
00040	ALAMEDA, Lawrence Dean	00101	AMMON, Jack Morrow
00060	ALLEN, Deborah Ann	00102	AMMON, John
00062	ALLEN, Duane Wilford, Jr.	00103	AMMON, Joseph Allen
00063	ALLEN, Elaine Yvonne	00104	AMMON, Junius Allen
00064	ALLEN, John Melvin	00105	AMMON, Kenneth Dale
00065	ALLEN, Karen Lynette	00106	AMMON, Leslie
00066	ALLEN, Kathleen Lavonne	00107	AMMON, Lynne
00067	ALLEN, Laurie Ann	00108	AMMON, Michael Norman
00072	ALLEN, Terrance Michael	00109	AMMON, Phillip
00077	ALVARADO, Aaron Arthur	00110	AMMON, Ruth Edna Taylor
00082	ALVARADO, Maurice M.	00111	AMMON, Thomas Eugene
00084	ALVARADO, Tracy Lee	00112	AMMON, Wesley
00092	AMES, Roy, Sr.	00113	AMMON, Wesley Paul
00093	AMMON, Aldena Ruth	00115	AMOS, Corey Donavan
00094	AMMON, Bonnie Elaine	00123	ANDERSON, Dale Eugene
00096	AMMON, Charles	00125	ANDERSON, Gregory S.
		00126	ANDERSON, Kim Ann Anderson

Decl. No.	Name	Decl. No.	Name
00127	ANDERSON, Myron Wayne, Jr.	00186	BATES, Delray Lee
00129	BALDWIN, Verna Lee	00189	BATES, Richard Jay
00135	AIELLO, Michael Joseph, Jr.	00199	BEACH, Charles Edwin
00136	PATSEL, Rose Marie Aiello	00202	BEALL, Paul Joseph
00137	AIELLO, Viva Ardieth	00203	BEAN, Charles Luther, Jr.
00141	AYERS, Terry Alan	00208	BEAN, Steven Lee
00142	BABB, Dennis Ray	00213	BECK, Henry Arnold, Jr.
00144	BABB, Elizabeth Ann	00214	BECK, Valerie Sue
00145	BABB, Robert Leroy	00216	BEEBE, Clifford Henry
00146	BABCOCK, David Allen	00219	BEEBE, Elizabeth Carpenter
00148	BABCOCK, James Larkin	00220	BEEBE, Floyd William
00149	BABCOCK, Nanette Darlene	00223	BEEBE, Ronnie Ray
00157	BAILEY, Barri Iona	00227	BELGARD, David Keith
00158	BAILEY, Cindy Hope	00236	BERG, Eva Caroline
00159	BAILEY, George Clifford, Jr.	00237	BERG, Steven Michael
00160	BAILEY, George Clifford, Sr.	00240	YOUNG, Charlene Carol Bighead
00161	BAILEY, Jacqueline Rae	00241	BIGHEAD, Charlie, Jr.
00162	BAILEY, John Wesley, Jr.	00242	BIGHEAD, Chester
00163	BAILEY, Linda Joann	00243	NICK, Karen Lee Bighead
00164	BAILEY, Lois Ann	00244	BIGHEAD, Lillie Marie
00165	BAILEY, Roger Alfred	00245	BIGHEAD, Luther Robert
00166	BAILEY, Stanley Jackson	00246	BIGHEAD, Mary Lou Johnny
00167	BAILEY, Stephen Charles	00247	HOSTLER, Nora Mae Bighead
00168	BAILEY, Violet Green	00248	BIGHEAD, Raymond
00174	BARNES, Dennis Wayne	00249	BIGHEAD, Samuel Duane
00176	BARNETT, Lori Ann	00250	BIGHEAD, Sandra Lou
00178	BARRY, Daniel Dudley	00251	BILLY, Melvin
00179	BARRY, Marie Eva Kimsey	00256	BLACKBURN, David Courtney
00184	BATES, Arthur Lee	00257	BLACKBURN, Patricia Ann Lewis
		00259	COOPMAN, Cheryl L. Blagden

Decl. No.	Name	Decl. No.	Name
00260	BLAGDEN, Evelyn Marie	00324	BROWN, Aaron Arthur
00261	BLAGDEN, Linda Sue	00325	BROWN, Alfred Frank
00262	BLAGDEN, Lisa Annette	00328	BROWN, Bert
00265	BLAKE, Mark Erwin	00329	BROWN, Beverly Alma
00268	BLAKE, Shirlee Ann	00330	BROWN, Carmen Renee
00269	BLESSING, Vera Mae	00332	BROWN, Christine D.
00270	KNUTSON, Annette Blondell	00333	BROWN, Donald Eugene
00271	BOWERS, Janet Rene	00335	BROWN, Earl Leroy
00272	VAUX, Joyce Kaye Blondell	00336	BROWN, Elsie Marie McClung Criteser
00273	BLOUNT, Marion Rose Donna Martin	00338	BROWN, Kenneth D.
00275	BOMMELYN, Eunice Henry	00339	BROWN, Laura Lynn
00276	BOMMELYN, Loren James	00340	BROWN, Lesley Deanne
00277	STEINRUCK, Sheryl Ione Bommelyn	00341	JONES, Marilyn Frances Brown
00278	JONES, Vickie Lynn Bommelyn	00342	BROWN, Michael Alfred
00279	BOMMELYN, William Henry	00343	BROWN, Norma Jean
00291	BOX, Arlene De-Ett Swanson	00344	BROWN, Wesley
00292	BOX, Cynthia De-Ett	00345	BRUNDIN, Kara Lee
00293	BOX, Lonnie Dale	00346	BRUNDIN, Thomas Haynes, II
00294	BOX, Monte Paul	00347	BRUNDIN, Thomas Haynes, III
00295	BOX, Ramona Arlene	00348	BRUNDIN, Eric Floyd
00296	BOX, Robert Orvis	00349	BRUNDIN, Luanna Ellen
00298	BOYER, David Bruce, Jr.	00350	BRUNDIN, Martha Sue
00310	TUBBS, Clara Joan Brooks	00354	BUCKLEY, Frederick James
00311	PAOLI, Darla Jean Brooks	00356	BUCKLEY, Lorie Marie
00313	BROOKS, Jaclyn Elaine	00358	BURNETT, David Edward
00317	BROOKS, Myrtle Robinson	00359	BURNETT, Jimmy Charles
00318	BROOKS, Nancy Coleen	00360	BURNETT, Nadine Carol
00319	BROOKS, Rebecca Sue	00361	BURNETT, Steven Wesley
		00365	BUSSELL, Anita Lynn
		00366	BUSSELL, Clemard Issac, Jr.

Decl. No.	Name	Decl. No.	Name
00367	BUSSELL, Clemard Issac, Sr.	00418	CATONE, Florence Dornback
00368	BUSSELL, Gordon Lester	00419	CATONE, George Richard
00369	BUSSELL, Neta M. Dartt	00420	CEJA, Francisca
00370	BUSSELL, Oswald Noel	00421	CESSNUN, Barbara Jean Wilson
00371	BUSSELL, Timothy Leonard	00424	CHARLES, Cecil Albert, Jr.
00377	CAETANO, Deborah Marie	00428	CHARLES, Fred William
00378	CAETANO, Frank Henry	00431	CHARLES, James Leroy aka Noris, Jr.
00379	CAETANO, Rodney James	00432	CHARLES, Joann Scott
00380	CAETANO, Thomas James	00439	CHARLES, Margaret Jean
00381	CALDWELL, David Glenn	00440	CHARLES, Mary Ellen
00383	CALDWELL, Lewis Edmond, Jr.	00441	CHARLES, Ray Hughie
00386	CARPENTER, Sherry Fay	00448	CHASE, Billy Walter, Sr.
00387	CALDWELL, Virginia Fay	00449	CHASE, Catherine Lorine
00389	CAMPBELL, Evelyn	00452	FENDER, Jeanine Lois
00391	CANTWELL, Gloria Lee	00453	CHASE, John Scott
00392	CANTWELL, Laura Sue	00454	CHASE, Karen Linnae
00393	MARCH, Leanne Lynn Cantwell	00455	CHASE, Linda Kathyne
00394	CANTWELL, Teresa Evelyn	00457	CHASE, Mark Henry
00397	CARPENTER, Delmer Elroy	00464	CHOAT, Alvine Marie
00402	CARRIER, Elsie G. Carpenter	00467	CIRINO, Phillip Ivan
00403	CARRIER, Hughey Jonathan, Jr.	00468	CLAGGETT, Darryl Harvey, Jr.
00414	CASTRO, Brenda Lee	00469	CLAGGETT, Lawrence Eugene
00415	CASTRO, James Richard	00470	REYES, Kim Marie Clark
00417	CASTRO, Julie Ann	00472	CLARK, Dane T.
		00474	CLARKE, Rodney Arthur, Jr.
		00477	CLAYTON, Debbie Josephine

Decl. No.	Name	Decl. No.	Name
00487	COLEMAN, Laura Scott Brundin Hostler	00569	CURTICE, Karen Jo
00491	CONNER, Carol Lynn	00572	CURTICE, Timothy
00492	CONNER, John Clinton, Jr.	00574	DAGGETT, Leland
00495	CONNER, Karen Ann	00575	DAGGETT, Marcia
00499	COOK, Kirk Van	00576	Loretta
00501	COOK, Mark Richard	00577	DAGGETT, Maureen
00502	COOKE, Paige Kimball	00578	Leonora
00508	COOPER, Dolores Corrine	00581	DAGGETT, Michelle
00520	COOPER, Ruth J.	00582	Leanda
00526	WEBSTER, Constance Marie Costa	00583	DAGGETT, Monique
00531	COVEY, Meredith Mae Richards	00584	Leon
00532	COX, Barbara Anne	00585	DAIGNAULT, Rene
00533	COX, Cindee Marie	00586	DARTT, Wilmer Allan
00535	COX, John Michael	00587	DAVE, Fannie Ruben
00537	COX, Michael Wayne	00588	Abernathy
00538	COX, Terri Lynne	00589	DAVE, Harold
00540	CREWS, Evelyn Violet Jurin McClellan	00590	DAVIDSON, Charlene
00541	CRITESER, Bobbie Lee	00591	Marie
00542	CRITESER, David Martin	00592	DAVIDSON, Earl Gene, Jr.
00543	CRITESER, Dawn Alane	00593	DECANTI, Stacey Ann
00544	CRITESER, Janelle Sue	00594	DECANTI, Donna
00545	CRITESER, Kathleen Marie	00595	Marie
00546	CRITESER, Phyllis Fay	00596	DECANTI, Anthony M., Jr.
00547	CRITESER, Raymond Edward	00597	DERHAM, Pauline Pike
00548	ZOSEL, Rayona Fay Criteser	00598	DEVERAUX, Bruce
00549	CRITESER, Teresa Ann	00599	Elwin
00550	CRITESER, Timothy Samuel	00600	DEVERAUX, Douglas
00551	CRUTCHFIELD, Adam Bruce	00601	Dwight
00558	CRUTCHFIELD, Mark Alan	00602	DEVERAUX, Ellen
		00603	Gertrude
		00604	DEVERAUX, Leonard
		00605	Terry
		00606	DEWEY, Denton
		00607	Patrick
		00608	WEEKS, Jo Ann
		00609	Moorehead Dewey
		00610	DEWEY, Michelle Evon
		00611	DOBREC, June Anne
		00612	DOBREC, Antonia

Decl. No.	Name	Decl. No.	Name
00628	DOBREC, Robert Lee	00735	FIGONI, Tiffany
00628B	DOBREC, Michael Ray		Christine
00629	DOBREC, Sally Corrine	00743	FITZGERALD, Shirley
00630	DOBREC, Victor Anton, Jr.		Ann Wilson
00631	DOBREC, Victor Anton, III	00749	FLORES, Katherine
00642	DONNIONS, Alice Jane		Gayle
00658	DOWNS, Peter	00751	FOLKINS, Antone
	Frederick		Wayne
00662	DOWNS, Susan Marcia	00752	FOLKINS, Diane Sue
00663	DROWN, Blanche		Mattz
	Vivian	00753	FOLKINS, Michael
00664	DROWN, Edmund		Adam
	Alexander	00754	FOLKINS, Roy Lee, Jr.
00665	DRYDEN, Anni S.	00756	FONG, Dunphy Tom
	Morton Van	00763	FORD, Gary Edward
	Landingham	00764	FORD, Howard Gene
00679	DYER, Beverly Jean	00766	FOREST, Charlene
00683	EDDY, Christopher	00767	FOREST, Esther
	James	00768	FOREST, Richard
00687	EDWARDS, Marian		Edward
	Kay	00808	FRITZ, Mae Evelyn Ned
00690	EISELE, Alice Marie		Newmill Rako
00696	ELLER, Barbara Jane	00809	PEARSON, Phyllis
	Charles		Joyce Fry
00697	ELLER, Michael Todd	00811	FRYE, Clifford Leonard
00698	ELLER, Vern Robert, Jr.	00813	FRYE, David L.
00705	EMERY, Mildred	00814	FRYE, Davita Rose
00715	EVANS, Kathryn Gale	00815	SMITHER, Davita Rose
00717	EVANS, Rickey R.		Frye Copeland
	Ward	00816	FORD, Eugene David
00718	EVANS, Robert Donald		Frye
00721	FAUSTINO, Tina Marie	00817	FORD, Linda Faye Frye
00722	FAUSTINO, Tracy	00819	FORD, Randal Wayne
	Dean		Frye
00723	FERNANDES, Andrew	00820	FRYE, Richard Samuel
	Pelino		Musselwhite
00732	FIESTER, Edward	00821	FRYE, Sandra Gail
	Robert		Musslewhite
00734	FIGONI, Michele Anne	00822	FULLER, Zena Pitt
		00824	FULTON, Elizabeth
			Marie Brown
		00825	FULTON, Irene May

Decl. No.	Name	Decl. No.	Name
00835	GALLION, Josephine Birdie Hufford	00930	GREEN, Betty Jean Hostler
00837	GALYEAN, David Clayton	00931	GREEN, Brenda Gayle
00838	GALYEAN, Gary Douglas	00933	GREEN, Doyle Carl
00839	GALYEAN, Gregory Allen	00934	GREEN, Evelyn Lila Henry
00846	GAULT, Susan J.	00935	GREEN, John Douglas
00880	GEORGE, Christine Young	00936	GREEN, Joyce Marie
00886	GEORGE, Lydia Bigby	00938	GREEN, Lincoln Ernest
00888	GEORGE, Roy Raymond	00940	GREEN, Maxwell Alvin
00895	GILKISON, Alan Duane	00941	GREEN, Melody Lee
00896	GILKISON, Grant Morgan	00942	GREEN, Nadine Jo Ann Henry
00897	GILKISON, Shirlee Elaine	00943	GREEN, Richard, Sr.
00898	GILLESPIE, Anthony L.	00945	GREEN, Stanley Ernest
00899	GILLESPIE, Anthony Zane	00946	GREEN, Verla
00901	GILLESPIE, Cornelius C.	00947	GREEN, Zelma Bartow
00902	GILLESPIE, Darrell Arden, Sr.	00958	GRiffin, Seeley Lane
00903	GILLESPIE, Darrell Arden, Jr.	00969	GRIGSBY, Bret Tracy
00904	GILLESPIE, Elaine Rose	00970	GRIGSBY, Debra
00905	GILLESPIE, Faron Dean	00971	GRIGSBY, Frances Mae
00906	GILLESPIE, Gary Nelson	00972	GRIGSBY, Glenn James
00907	GILLESPIE, Linda Arleen	00973	GRIGSBY, James Earl
00908	LOGAN, Pamela Ann Gillespie	00974	GRIGSBY, Kenneth Owen
00921	GORE, Kevin Wesley	00975	GRIGSBY, Russell Dean
00926	GRANT, Judith Pauline Green	00976	GRIGSBY, Sherry Lynn
		00977	GRIGSBY, Wayne A.
		00978	GROOME, Lydia Ruth Pevey
		00981	GRUBBS, Eugene Edward
		00983	GRUBBS, Lloyd Frederick
		00985	GRUBBS, Melvin Glenn
		00988	GRUBBS, Michael Lee
		00990	GRUBBS, Sally Kathleen
		00991	GURLEY, Mary Alvira
		00992	GUTIERREZ, Gloria Elaine Jones
		00993	EPPERSON, Iverna Darlene Gutierrez

Decl. No.	Name	Decl. No.	Name
00994	GUTIERREZ, Johnny Franklin	01047	HARRIS, Kelly Martha
00998	HABERMAN, Dorothy Dee	01048	HARRIS, Mary M. Pevey
01000	HABERMAN, Gary Lance	01056	WILSON, Theresa Jane Hartman
01003	HABERMAN, Marilyn Lea	01057	HARTMAN, Laurie Ann
01008	HALL, Helen	01061	HARTMAN, Wayne Eugene
01010	HAMES, Albert Bruce, Jr.	01063	HAVEN, Jennifer Lee
01011	HAMES, Albert Bruce, Sr.	01064	HAWVER, Cynthia Gail Howard
01012	HAMES, Bruce Wayne	01065	HAWVER, Deanna Gail Atkins Howard
01013	HAMES, Charles Frederick, Jr.	01066	HAWVER, Paula Marie Howard
01014	HAMES, Charles Leroy	01068	HEATH, Arlene Frances
01015	HAMES, Ernest Eugene	01069	HEATH, Diane Ellen
01016	HAMES, Jimmie Joe	01070	HEATH, Mary Christine
01017	HAMES, Karen Rachell	01085	HELMS, Gary Lane
01018	HAMES, Leroy Arthur	01086	HELMS, Gayla Louise
01019	HAMES, Ronald Dean	01087	HELMS, Geoffrey Lindsey
01020	HAMES, Sharen Lynne	01088	HELMS, Gerald Lance
01030	HANCORNE, Sue	01089	HELMS, Gilbert Lee, Jr.
01031	HANCORNE, Warren James	01090	HENDERSON, Clive Elwood
01032	HAND, David Brent	01091	HENDRICKSON, Karen Ann
01033	HAND, Rickey Lee	01093	HENDRICKSON, Ronald
01034	HAND, Vickie Lynn	01094	HENDRICKSON, Shirley M. Brown
01041	HARDING, Beverly Annett Mattingly	01100	HENDRIX, Veronica Dee
01042	HARDING, Dynice Annette	01104	HENRY, Grant Wesley
01043	HARDING, Gary Raymond	01105	HENRY, Kathleen Eunice Green
01044	HEINTZ, Cynthia J. Robinson Hardiman	01110	HENRY, Yvonne Annette
01045	HARRIS, Dorothy L. Pevey	01112	HICKEY, Kevin Joseph
01046	HARRIS, Jeffery Donald	01115	HICKOX, Clarice McCovey

Decl. No.	Name	Decl. No.	Name
01116	HICKOX, Kenneth Lloyd, Jr.	01187	HOWARD, Cheri Linette
01117	HILL, Marjorie Jean Seymour	01188	HOWARD, Delores
01119	HINSHAW, Ione Elsie	01190	HOWARD, Earl Vernon, Sr.
01126	HODGE, Henry Eugene	01198	HOWARD, Richard Lynn
01139	HODGE, Robert Charlie McCovey, Jr.	01203	HUFFORD, Eric John
01143	TRIPP, Maria Eileen Hoffman	01212	HURD, Allan Lee
01148	HOLDREN, Shannon Tarrell	01213	HURD, Lena Leona Hulleman
01152	HONEYCUTT, Betty Jo	01214	HUSBERG, Myrtle Velma
01153	HONEYCUTT, Billie Jean	01215	ICHELSON, David Leon, Jr.
01159	HONEYCUTT, James Wayne	01216	ICHELSON, Kathryn Diannel
01161	HONEYCUTT, Linda J.	01217	ICHELSON, Nancy Jean
01162	HONEYCUTT, Lorraine G.	01218	ICHELSON, Suzanne Claire
01164	HONEYCUTT, Preston Brian	01220	IIAMS, Jeffrey Allan
01167	HOPKINS, Clyde Lee	01221	IIAMS, Mary Ann
01168	HOPKINS, Ethel May	01222	IIAMS, Tanya Leigh
01169	HOPKINS, Karen Kaisi Kimsey	01223	INGRAM, Elaine Jolanda
01170	HOPKINS, Kenneth Sheldon	01224	INGRAM, Frances E.
01171	HOPKINS, Mark Perry	01225	INGRAM, Malena Edwina
01172	HOPKINS, Thomas Ernest	01226	INGRAM, Rhonda Eileen
01174	HORN, Charles H.	01232	ISKRA, Jerome Wesley
01175	HOSTLER, Chris Elaine	01235	JACKSON, Henry Reginald, Jr.
01176	HOSTLER, Elmer Alvin	01238	JAMES, Beverly Jean
01177	HOSTLER, Frank Harold	01240	JAMES, Diane Sue
01178	HOSTLER, Laura	01241	JAMES, Douglas Alan
01179	HOSTLER, Pamela Ray	01249	JAMES, Oliver
01180	HOSTLER, Robin Marlene	01257	JARBOE, Cathea C.
01181	HOTELLING, Barbara Marie	01258	JARBOE, Charles W.
01183	HOTELLING, Judith Lynn	01259	JARBOE, Chester Val
		01260	JARBOE, Jay Byron
		01261	JARBOE, John D.
		01262	JARBOE, Verna E.

Decl. No.	Name	Decl. No.	Name
01266	JENNESS, Robert Lee	01324	JONES, June Arlene
01268	JOCSING, John Davis, Jr.	01337	JONES, Yvonne Annette
01269	JOCSING, Lonnie Sue	01338	JURIN, Charles Ray
01270	JOCSING, Marilyn Sue	01339	JURIN, Donna Rose Dartt
01272	JOHANNSEN, Bruce Ingomar	01340	JURIN, Frank Allen, Sr.
01273	JOHANNSEN, David	01341	JURIN, Gary Russell
01274	JOHANNSEN, Diane Elvera	01342	JURIN, John Dale, Jr.
01276	JOHANNSEN, Hans Christian	01343	JURIN, John Dale, III
01280	JOHANNSEN, Irene Kathleen	01344	JURIN, Lillian Violet Carpenter
01281	JOHANNSEN, Jeraldine Georganna	01345	JURIN, Martin Leon
01282	JOHANNSEN, Joan Patricia	01346	JURIN, Milton Harvey
01284	JOHANNSEN, John Marel	01347	JURIN, Phyllis Jeanne Dartt
01285	JOHANNSEN, Judy Mae Hawkins	01348	YARIMIE, Christine Marie Kaisi
01287	JOHANNSEN, Randolph Allen	01349	KAISI, Irene Elena
01289	JOHNNIE, Minnie Ruben	01350	KAISI, James Charles
01290	JOHNNY, Clyde	01351	KAISI, Melanie Elizabeth
01294	JOHNSON, David Leroy, Jr.	01352	WEAVING, Susan Joyce Kaisi
01295	JOHNSON, Debra Dorene Rivas	01353	KAISI, Thomas Michael
01296	JOHNSON, Desiree Dawn	01356	KANE, Delvin
01303	JONES, Kenneth L.	01360	KANE, Lucinda
01305	JOHNSON, Marilyn Sue Oscar Martin	01361	KANE, Ollie D., Jr.
01306	JOHNSON, Melissa Ann	01362	KEEFER, Jessica Ann
01307	JOHNSON, Vickie Lynn Frost	01363	KEELER, Melvin R.
01310	JOHNSTON, Terri Ann	01364	MCCULLOUGH, Glenn Winton
01311	JOLE, Mabel	01366	KEENE, Robert James, Jr.
01317	JONES, Dennis Gerald	01367	KEENE, Sharon Rosette
01319	JONES, Francine	01375	KELSEY, Janice Elizabeth Raylor Patterson
01322	JONES, Janet Lynn	01376	KELSEY, Kimberley Violet
		01381	KIBBY, Daniel James
		01382	KIBBY, David Clarence
		01383	KIBBY, David Scott
		01384	KIBBY, Gayleen Isabel

Decl. No.	Name	Decl. No.	Name
01385	KIBBY, Wanda June	01451	LAMBERT, Noreen
01386	KIMSEY, Delmer		Ardith
	Harvey	01452	LAMPHIER, Cindy
01387	KIMSEY, Kelly K.	01453	LAMPHIER, Vivian
01388	KIMSEY, Leslie	01462	LAVENDER, Nena
	Michelle		Maria
01396	RAYMOND, Arnold W.	01465	STODOLA, Anita Faye
	King		Leest
01397	RAYMOND, Dale	01467	LEEST, Robert Donald
	Robert King	01468	LEEST, Stephen
01398	RAYMOND, Doreen		Laurence
	Fay King	01478	LEWIS, Charles
01399	RAYMOND, Nadine S.		Emerson
	King	01484	LEWIS, Ernest, Jr.
01400	RAYMOND, Roland	01486	LEWIS, Ernest, III
	Leroy King	01494	LEWIS, Henrietta
01404	KINNEY, Allison Louise		Wilma Masten
01405	KINNEY, Anjanette E.	01499	LEWIS, Kimberly
01407	KINNEY, Don Miller,		Kristine
	Jr.	01505	LEWIS, Donna Jean
01416	KINSMAN, Albert		Still
	Merle	01507	LIEN, David Andrew
01417	KINSMAN, Florence	01508	LIEN, John Ashford
	Bell	01511	LINDBLOM, Gregory
01418	KINSMAN, Gene		M.
	Douglas	01513	LINDGREN, Axel
01420	KLEINHANS, Dale		Roderick, Sr.
	Edward	01528	LITTLEFIELD, James
01421	KLEINHANS, Debora		Roscoe
	Ann	01529	LITTLEFIELD, Richard
01422	KLEINHANS, Dennis		William
	Gale	01531	LITTLEFIELD,
01424	KLEINHANS, Robert		Timothy Floyd
	Nelson	01532	LITTLEFIELD, Wayne
01427	KNIGHT, Maxine		Lee
01438	KOLB, Dorene	01538	BUTLER, Ralene Rose
01439	KOROUSH, Naomie		Logan
	Mae Thornton	01539	LONG, Arlon Reed
01440	KUENSTER, Gail Diane	01540	LONG, Clois Grover
01443	KUENSTER, Lynn F.	01542	LONG, Evelyn A. Lyons
01448	LAMBERT, David	01543	LONG, Kenlyn Henry
	Francis	01544	LONG, Lonnie Ruben
01449	LAMBERT, Linda Marie	01545	LONG, Loren Leroy, Jr.

Decl. No.	Name	Decl. No.	Name
01546	LONG, Sterling Leone, Sr.	01586	MCBRIDE, Dean Curtis
01548	LOPEZ, Barbara Maxine Richards	01587	MCBRIDE, Josephine J. Beach
01549	LOPEZ, Clara Moorehead	01588	MCBRIDE, Ralph
01550	LOPEZ, Edward Joseph, Sr.	01590	MCCLELLAN, Duane K.
01551	LOPEZ, Franklin Smiley	01591	MCCLELLAN, Edward Kenneth, Jr.
01552	LOPEZ, Thomas Norman	01593	MCCLELLAN, Janet Denise
01553	LOVE, Leora Mary Hames Beebe	01594	MCCLELLAN, Paul George
01555	MCCULLOUGH, Carmen D. Lawe aka Lowe	01595	MCCLOSKEY, Allen Lane
01556	LAWE, David Daniel aka Lowe	01599	MCCLOSKEY, Terri Lynn
01557	LAWE, Jackson Jerome Conrad	01600	MCCLOSKEY, Timothy Joe
01558	KENT, Lavon Rose Lawe	01601	MCCLUNG, Herbert Samuel
01559	LAWE, Mary Jane Patterson aka Lo	01603	AMMON, Carol Leigh McConnell
01560	LUCERRO, Angela Marie	01604	MCCONNEL, Denise Raeney
01561	LUIS, Constance K.	01608	MCCONNELL, Lisa Marie
01562	LUIS, Jodye Luise	01613	MCCONNELL, Stacy Lee
01563	LUIS, Stephen C.	01614	MCCONNELL, William Irville, Jr.
01564	LUIS, Tony Francis, Jr.	01617	MCCOVEY, Allen C.
01565	LUSTER, Dennis George	01619	MCCOVEY, Brian Dean
01567	LYALL, Kim Marie Roxanne	01632	MCCOVEY, George, Sr.
01571	LYONS, Judy A.	01634	MCCOVEY, Holly Ann
01573	LYONS, Muriel	01661A	MCCOVEY, Rosa Marie
01577	LYTLE, Steven Michael	01661B	MCCOVEY, Sadie
01578	MCALLISTER, Benny Edward	01671	MCCOY, Bonnie Sue
01580	MCALLISTER, Denny Eugene	01672	MCCOY, Connie
01585	KENNEDY, Carmen Anita McBride	01675	MCDONALD, Evan Lee
		01679	MCDONALD, Laura Shaffer
		01682	MCDONALD, Thomas

Decl. No.	Name	Decl. No.	Name
01692	MCGUIRE, George Parker	01812	MARTIN, Doris Christine
01694	MCGUIRE, Jean Marie	01814	MARTIN, Eugene A.
01699	MCKENZIE, Denise Marie	01816	MARTIN, Eva Marie
01700	MCKENZIE, Joann Marie	01817	MARTIN, Frances Dee
01701	MCKENZIE, Kelly Ann	01818	MARTIN, Jerry Dean
01702	MCKENZIE, Leslie Lee	01819	MARTIN, John E.
01703	MCKENZIE, Mary Dawn	01820	MARTIN, Johnny Ray, Sr.
01704	MCKINZIE, William Richard	01822	MARTIN, Kristi Lynn Trachsel Ellis
01723	MCLAUGHLIN, Eugene Reed	01823	MARTIN, Lance Allen
01731	MCNAIR, Bertha Jean Rice	01824	MARTIN, Lauretta
01747	NACE, James Richard (McNertney)	01825	MARTIN, Laverne Lynn
01748	RICHCREEK, Michael Nathaniel (McNertney)	01826	MARTIN, Lee Arnold
01751	MCQUILLEN, Betty James	01827	MARTIN, Lester A.
01761	MC VEY, Lorraine Kay	01828	MARTIN, Lester Charles
01762	MC VEY, Michael Edwin	01830	MARTIN, Linda Jo
01778	MAHACH, Harvey Lawrence	01832	MARTIN, Louis Austin, Sr.
01781	MALLORY, Janice Kay Eller	01833	MARTIN, Louis Austin, Jr.
01782	MALLORY, Michelle Dawn	01838	MARTIN, Mickey Gene
01786	MALONEY, Ruth Ann	01840	MARTIN, Rhonda Luanne Berry
01789	MARUSCO, Judith Lee	01841	MARTIN, Richard Stokes
01791	MARKLEY, Gloria Y.	01845	MARTIN, Tommy Joe
01792	MARKLEY, Ray Clifton	01852	MASSEI, Marci Jo
01796	MARKUSSEN, Doreen Lynette	01853	MASSEI, Michael Anthony
01805	MARSHALL, Stephanie Jame	01854	MASSEI, Patricia Jo Anne
01810	MARTIN, Debra Jean	01861	MASTEN, Charles Augustus, III
01811	MARTIN, Donna Rose Frye	01862	MASTEN, Cheryl Rose Guy
		01869	MASTEN, Gregory Anthony
		01870	MASTEN, Jennie A.
		01874	MASTEN, Vesta Renee
		01878	MASTEN, Patrick Dale

Decl. No.	Name	Decl. No.	Name
01881	MATA, Robert Arthur	01925	MELLO, Barbara Jean
01882	MATA, Millie (or 1880)	01926	MELLO, Dorothy
01885	MATHEWS, Charles		Darlene
	Ross	01927	MELLO, Joseph John,
01886	MATHEWS, Larry Lee		Jr.
01887	MATHEWS, Margaret	01928	SPENCER, Judith Ann
	Eve Charles		Mello
01889	MATILTON, Elsie	01929	MELLO, Mary Arlene
01891	MATTINGLY, Fred	01930	MENZEMER, Kathleen
	Harlan		Anne
01892	MATTINGLY, George	01935	MENDEZ, Keith
	Franklin, Jr.		Charles
01893	LEE, Thiesta Darlene	01940	MERIDETH, Bruce
	Mattingly		Edward
01894	MATTINGLY, Vicki	01943	CORDIS, Janice Faye
	Lyn		Mertle
01895	MATTINGLY, Wilma	01949	MILES, Lucy Birdie
	Roselyn Bussell		Montgomery
01896	MATTZ, Betty Maxine	01950	MILES, Donna Marie
	Jones		Stevens
01898	MATTZ, Donald Ray	01954	MILLIKEN, Daniel
01899	MATTZ, Edna Caroline		Newall
	Criteser Brown	01956	MILLIKEN, William
01900	MATTZ, Emery T., Sr.		Brewer
01903	MATTZ, Glena Renae	01960	MINARD, Filmore
01904	MATTZ, Jack Edwin		Harvey
01905	MATTZ, John Thomas	01963	MINARD, Phillip
01906	MATTZ, Kenneth Lee,		Eugene
	Jr.	01971	MITCHELL, Lavina
01907	MATTZ, Kenneth Lee,		Marie
	Sr.	01972	MITCHELL, Lenoire
01908	MATTZ, Kim Rochelle		Christen
01910	MATTZ, Michael	01975	MITCHELL, Mariene
	Anthony		Cheryl
01911	MATTZ, Michael Ray	01976	MITCHELL, Rodney T.
01913	MATTZ, Raymond		aka Eugene Gist
	Kenneth	01979	MITCHELL, Veta
01914	MAY, Michael Britt		Melvina
01917	MEAD, Crystal Joy	01983	MOLLIER, Donna
01918	MEAD, Elaine Darlene		Marie
	Owens	01986	MOLLIER, Jennifer
01924	MELLO, Audrey Mae		Lynne
	Swanson		

Decl. No.	Name	Decl. No.	Name
01987	MOLLIER, Katherine Louise	02044	MOOREHEAD, Fred
01988	MOLLIER, Kimberly Allison	02045	MOOREHEAD, Harvey Lewis
01990	MOLLIER, Michael Charles	02047	MOOREHEAD, Janet
01991	MOLLIER, Monty Bryon	02048	MOOREHEAD, Janice Felicia Grisham
01994	MOLLIER, Stephanie Ann	02049	MOOREHEAD, Lila R. James
01995	MOLLIER, Terri Rennee	02050	MOOREHEAD, Louis Frank
01996	MONHART, Maryellen Benson	02052	MOOREHEAD, Margaret Frances
01997	MONTEITH, Frederica Beach	02053	MOOREHEAD, Melissa Diana
02009	MOON, Clyde Berry Jr.	02054	MOOREHEAD, Ray L.
02016	MOON, Lila Lynn	02055	MOOREHEAD, Richard Lloyd, Sr.
02018	MOORE, Ann Mattz La Jasse	02056	MOOREHEAD, Richard Lloyd, Jr.
02019	MOORE, Dennis Wade	02058	MOOREHEAD, Stella M. Moffett
02020	MOORE, Ernest Dale	02059	MOOREHEAD, Theodore Ray, Jr.
02022	MOORE, James Stephen	02078	MORTON, Charles F.
02025	MOORE, Karen Yvonne	02107	NATT, Florinda Dawnnette
02027	MOORE, Kathy Lynn Moore	02108	NATT, Lilian L.
02029	AYDELOTT, Linda Dianne Moore	02109	NATT, Mary Shaffer
02030	MOORE, Michael Wayne	02127	NILES, Cindy Marie
02031	MOORE, Patricia	02142	NIXON, Linda LaJean
02033	GRIFFIN, Tanya Jeanne Moore Lake	02143	NOONAN, Christine Ruben
02036	SAMUELSEN, Bonita Fay Moorehead	02151	NORRIS, Ella Vera Green
02037	MOOREHEAD, Cornelius Eugene	02157	NORRIS, James Leroy
02038	MOOREHEAD, Darrell Larry	02159	KALER, Lenni Marie Nelson
02040	MOOREHEAD, Elaine Marie	02175	NORRIS, Stanford Edison, Jr.
02042	MOOREHEAD, Frank	02190	NULPH, Cynthia Joanne Baldy
02043	MOOREHEAD, Franklin Larry	02192	NULPH, Randall Eric
		02193	NULPH, Robert Allen

Decl. No.	Name	Decl. No.	Name
02193	NIXON, Linda LaJean	02295	PALMER, Vernon C.
02194	NULPH, Ronald Wayne	02296	PARFREY, Christine
02218	OFFICER, Betty Jean		Louann Oscar
	Pike	02299	PARKER, Sandra Lee
02222		02300	PARSONS, Mary
02231	OLSON, Dana Anthony		Gertrude Mattz Gray
02235	OLSON, Karen Dawn	02307	PATTERSON, Irene
02236	OLSON, Sonja		Marie
02239	O'NEILL, Cheryl Mae	02310	PATTERSON, Stanley
02245	O'NEILL, Monna		Warren
	Francine	02311	PAUL, Alice Inger Pitt
02246	O'NEILL, Owen Bradley	02313	PEARCH, Ina Jane
02247	O'NEILL, Patrick Glenn		Bussell
02265	OSCAR, Anita Ann	02314	PEARSON, E.W.
02266	OSCAR, Benjamin	02318	PEARSON, Ronald
	Derick		Matt
02268	OSCAR, Debra Lynn	02320	PEONE, Charles E., Jr.
02269	OSCAR, Delano	02321	RUNKEL, Maureen E.
	Franklin, Jr.		Peone
02271	OSCAR, Freelan N., Sr.	02322	PEONE, Ramona Mae
02272	OSCAR, F-reelan Nucoa,	02323	PEONE, Raymond
	Jr.		Walter
02273	OSCAR, Gertrude	02324	GREGORY, Susan Gail
	Nathleen		Peone
02274	OSCAR, Imogene Rita	02325	GU, Yvonne Gaylean
	Scott		Peone
02277	OSCAR, Lewis	02326	PERKINS, Dana Gary
	Benjamin	02328	PERKINS, Julie A.
02279	OSCAR, Alfred Melford	02329	PERKINS, Merrilyn
	Livingston, Sr.	02332	PETE, Lenora Mae
02280	OSCAR, Melford L. aka	02333	PETE, Linda Elaine
	Harrison, Jr.	02345	PETERS, Pamela Lynn
02281	OSCAR, Robert Lewis	02347	ROBERSON, Raeann
02282	OSCAR, Suanne		Frances Peters
02283	OSCAR, Valdemar	02351	PETERS, Tamara C.
	Ookakae	02356	PEVEY, Mary Elizabeth
02285	OWEN, Elaine		McClellen
02287	OWENS, Iola W.	02361	PHILLIPS, David Roy
02288	OWENS, Margaret Ann	02364	PIKE, Rosalie Patterson
02289	OWENS, Melinda Rae	02365	PIKE, Sheila
02290	OWENS, Muronica Lea	02368	PITT, Gary Glenn
02292	OWNSBEY, Keith	02369	PITT, John Joseph
	James	02371	PITT, Joseph Henry, Jr.
02294	PALMER, Dennis G.	02372	PITT, Rhonda Lee

Decl. No.	Name	Decl. No.	Name
02373	PITT, William Peter	02448	RAILS, Susan Lee
02374	ROYALTY, Debra D. Pittman	02451	RAINERI, Evelyn Johnnie
02375	PITTMAN, Dennis	02454	RAMBO, Donna Dee Stevenson
02376	PITTMAN, Fannetty McCoy	02456	RAMBO, Joyetta Jane
02377	PITTMAN, William R.	02458	RAMIREZ, George, Jr.
02378	PITTMAN, William K.	02461	RAMIREZ, Michael
02379	PLIKERD, Chad Eugene	02471	REECE, Frank James, Sr.
02380	PLIKERD, Cindy Ann E.	02477	REECE, Willa Mae Burton
02381	PLIKERD, Gail Nelson	02478	THOMAS, Adrienne F. Whipple
02382	PLIKERD, Shirley June	02479	REED, Annette Louise
02383	PLIKERD, Shirley Bernice Edwards	02480	REED, Barbara Renee
02386	POLE, Carlton Arnell	02485	REED, George Earl
02388	POLE, Jeffrey D.	02486	REED, Jeanine O'della
02389	POWELL, Debbie Marie Osier	02491	REED, Lois Marie Berg
02391	PRESTON, Lois George Kerwin	02493	REED, Mary Ella
02393	PRICE, Lisa Joan	02501	REED, Yvonne E.
02395	PRICE, Shelley Jean	02503	REIDEL, Hazel Marie Critesser
02396	PRIDEMORE, Stephen Leonard	02504	RICE, David Evan, Jr.
02397	PRINGLE, Eunice	02505	RICE, Evelyn Marie
02404	PROCTOR, Larry Dwayne	02506	RICE, Norma Jean
02406	PROCTOR, William Blake	02508	RICHARDS, Allen James
02407	PUZZ, Debra Lillian	02509	RICHARDS, Allen James, Jr.
02409	PUZZ, Denise	02510	RICHARDS, Brian Keith
02411	ENGLAND, Kathy D. Puzz	02511	RICHARDS, Cherry Ann
02414	ENGLAND, Sherr Lynn Puzz	02512	RICHARDS, Clyde
02419	QUINN, Danny Ray, Jr.	02513	RICHARDS, Darlene A. Hostler
02421	QUINN, Eleanor Rosalie	02516	RICHARDS, De Wayne
02434	QUINN, Martha Noble	02517	RICHARDS, Edward, Jr.
02445	RAILS, Gary Paul	02518	RICHARDS, Edward, III
02446	RAILS, Gladys Marie Tinsley Leroy	02519	RICHARDS, Ernest
02447	RAILS, Leroy Vern		

Decl. No.	Name	Decl. No.	Name
02520	RICHARDS, Etta Mae Henry	02564	LILZE, Denise Elaine Robinson
02521	RICHARDS, Eugene Clyde	02565	ROBINSON, Edward Lee
02522	TRAVIS, Florence J. Richards	02566	ROBINSON, Roy Elmer
02523	RICHARDS, Floyd, Sr.	02567	ROBINSON, Evonne Joy
02524	RICHARDS, Floyd Edward, Jr.	02570	ROBINSON, Kenneth Vernon, Jr.
02525	RICHARDS, Frank Edward	02571	ROBINSON, Richard Harding
02527	RICHARDS, Irene Marie	02572	ROBINSON, Richard Raynard
02528	RICHARDS, Janie Leigh	02573	ROBINSON, Robert Raymond
02529	RICHARDS, Jesse Lloyd, Sr.	02574	ROBINSON, Robert Roosevelt
02530	RICHARDS, Kim Maxine	02576	ROBINSON, Ronda Gay
02531	RICHARDS, Laurene Alice	02577	ROBINSON, Shelly Marie
02533	RICHARDS, Lisa Marie	02578	ROBINSON, Tamara Rae Tonicore
02534	RICHARDS, Mark Kelly	02581	ROEMMICH, Barbara Ann
02535	RICHARDS, Marvin Lyle	02582	ROEMMICH, Geoffrey Scott
02536	RICHARDS, Mattie Jane Henry	02583	ROEMMICH, John Douglas
02538	RICHARDS, Murray Lloyd	02584	ROEMMICH, Margaret June
02539	RICHARDS, Randall Elton	02585	ROEMMICH, Mark Lawrence
02540	RICHARDS, Ronald David	02586	ROEMMICH, Ronald Steven
02542	RICHARDS, Viola Erline Green	02587	ROEMMICH, Sharon Kay
02543	RICHARDS, Walter, Jr.	02588	ROEMMICH, Stanley James
02544	RICHARDS, Walter, Sr.	02589	ROEMMICH, Victoria Marie
02545	RICHARDS, William Harrison, Sr.	02590	ROGERS, Pauline Marie Kothman
02546	RICHARDS, William Harrison, Jr.	02597	HAMMOND, Carrie Lee Rook
02562	ROBINSON, Alan Elliott	02598	ROOK, Carolyn Louise

Decl. No.	Name	Decl. No.	Name
02601	RASSBACH, Carol Lynn	02681	SCOTT, Bonnie Lou
02602	RASSBACH, Michael Lee	02682	SCOTT, Carla A.
02603	RASSBACH, Roberta Davis	02684	SCOTT, Chester E., Sr.
02612	ROUSE, Violet Leadema Hames	02685	SCOTT, Chester E., Jr.
02613	ROWE, Dan Michael	02686	SCOTT, Debra Cherie
02614	ROWE, Karen Denise	02688	SCOTT, Ernest
02615	FERRIS, Yvonee Faye Rowe	02689	SCOTT, Ethel E. Moorehead
02621	RUUD, Casbara	02690	SCOTT, Fred William, Sr.
02625	MARSHALL, Stephanie J. Cooper Ryerson	02691	SCOTT, Frederick William, Jr.
02635	SALAZAR, Lillian C. Ames Oscar	02696	SCOTT, Janice R.
02639	SAUNDERSON, Betty	02698	SCOTT, Joan Whitlatch Murdock
02647	SANDERSON, Eldon A.	02703	SCOTT, Lucinda Lee
02659	SANDERSON, Stephen Floyd	02706	SCOTT, Shermaine
02662	BURGESSION, Karan Ann Sandholm	02707	GOODLIN, Sherry Lee Scott
02663	SANDHOLM, Melvin Arvid	02711	SCOTT, Yvonne Elizabeth
02664	SANDKULLA, Deborah Jane	02713	SERGEYS, Marrollee Kay
02665	SANDKULLA, Harold Lane, Sr.	02714	SERGEYS, Michael E. John
02666	SANDKULLA, Harold Lane, Jr.	02715	SEVERNS, David Eric
02667	SANDKULLA, Helen Lorraine	02717	SEYMOUR, David Terry
02668	SANDKULLA, Mary Lilene	02718	SEYMOUR, Elizabeth Ann Perez
02669	SANDKULLA, Richard Williams	02719	SEYMOUR, Gloria Jean Hill
02672	HICKEY, Dorothy Ortha Schade	02720	SEYMOUR, Joseph Hugh, Sr.
02673	SCHADE, Ronald Lee	02721	SEYMOUR, Mabel Eileen Menard
02674	DAKE, Sharon Rose Schade	02722	SEYMOUR, Margaret Catherine
02676	SCHWENK, Eric Darrell	02723	SEYMOUR, Roy
		02727	SHERMAN, Patricia Bussell
		02743	SIMMS, Florence

Decl. No.	Name	Decl. No.	Name
02749	SKAGGS, James William, Jr.	02850	STEBBINS, Larry Stephen
02750	SKAGGS, Joan Elsie Weber	02852	STENGER, George Alvin
02751	SLIGH, Sharon Jane Eller	02857	STEVENS, Kim Denise
02761	SMITH, Donna Marie	02864	STEVENS, Nina Marie
02771	SMITH, Lesley Lorine	02865	STEVENS, Ricky Eugene
02772	SMITH, Lila Mae	02871	STEWART, Connie Gwen
02777	SMITH, Maydene David	02873	STEWART, Howard Eugene, Sr.
02783	SMITH, Robert Wayne	02874	STEWART, Howard Eugene, Jr.
02785	SMITH, Shawn La Rue	02879	STILLWELL, Barbara Jean
02786	SMITH, Stacey Maelin	02880	STILLWELL, Betty Jane Robinson
02788	SMITH, Terry Lee	02881	STILLWELL, Cecil Allen
02789	SMITH, Una Marie	02882	STILLWELL, Dorothy Robinson
02791	SMITH, Virginia M. McDonald Williamson	02883	STILLWELL, Michael Everett
02792	SMITH, Wayne Leroy	02884	STILLWELL, Raymond Dudley
02813	SNAPP, Darlene Violet	02885	STILLWELL, Sandra Lee
02814	SNAPP, Elizabeth	02886	STOGSDILL, Roy Charles, Jr.
02815	SNAPP, Frances Charlene	02887	STOKES, Christie Marlene
02816	SNAPP, Joseph Edward	02893	STRACENER, Susan Renee
02817	SNAPP, Roland Scott	02898	STYLES, Fletcher B. Joseph Haward Coleman
02818	COMPTON, Durlinda Rose Snider	02907	SUPER, Kendra Zoe
02819	SNIDER, Janette Marie	02915	SWAIN, Mary
02820	SNIDER, Jean Marie Swanson	02918	SWANSON, Dale Ernest
02821	SNIDER, Jerry Lee	02919	SWANSON, David Theodore
02822	SNIDER, Jimmie Dee	02920	SWANSON, Dovie Ray
02823	SNIDER, John D., IV		
02824	SORRELL, Charles		
02828	SORRELL, Willard John		
02832	SPAULDING, Liane Marie		
02833	SPAULDING, Kenneth Charles		
02834	SPAULDING, Kenneth C., Jr.		
02835	SPEAR, Patrick Henry		
02848	STASTKA, Olive Edna		
02849	STEAD, Roanne Electa		

Decl. No.	Name	Decl. No.	Name
02921	SWANSON, Deborah Lynn	02963	TAYLOR, Janice Elizabeth Patterson
02922	SWANSON, Dennis Ray	02964	Kelsey
02923	SWANSON, Donna Darlene	02965	TAYLOR, Julie Ann
02924	SWANSON, Donald Percy	02966	TAYLOR, La Ree Maria
02925	SWANSON, Donald Warner	02967	Smith
02926	SWANSON, Eddie Ray, Sr.	02970	TAYLOR, Melodee Rae
02927	SWANSON, Eddie R., Jr.	02972	TAYLOR, Paul Allen
02928	SWANSON, Elwood Theodore	02973	TAYLOR, Richard Oscar
02929	SWANSON, Ernestine O., Sr.	02975	COOPER, Sharee Lorraine Taylor
02930	SWANSON, Gary Dean	02976	TAYLOR, Shirley
02931	SWANSON, Katherine Eileen	02979	TEMPLE, Glenn William
02932	SWANSON, Leslie Filbert, Jr.	02981	TEMPLE, Roney Dale
02933	SWANSON, Leslie Phillip	02983	TENNISON, Lorette Elizabeth
02934	SWANSON, Michael Peter	02992	THOMAS, Roy J.
02935	SWANSON, Oscar Peter	02998	THOMPSON, Robert Lee
02936	SWANSON, Terry Wayne	03004	THORTON, Charles Leo
02937	SWANSON, Zulene Marion	03005	THORNTON, Colleen
02952	TAGLIABUE, Sybil Helen Norton	03006	THORTON, Goldie
02953	TARBELL, Gail Marie	03007	THORNTON, Jackie
02954	TARBELL, Sandra Lynn	03008	THORNTON, Maxine
02955	TARBELL, Sharon Elaine Tinsley	03010	TINSLEY, Nancy Ann
02956	TAYLOR, Brenda Denise	03011	TOLMAN, Alice Arlene Berg
02957	TAYLOR, Brian Alan	03012	TOLMAN, Jody Ann
02958	TAYLOR, Dana Gene	03013	TOMASINI, Donald Andrew
02961	WOLFE, Deon Taylor Daggs	03017	TONDANI, Cynthia Juli Ann
		03018	TONDANI, Diane M.
		03022	TRACY, Larry Sidney
		03030	TRIMBLE, Donald Edward, Sr.
		03033	TRIMBLE, Franklin William, Sr.
		03035	TRIMBLE, Frederic John, Sr.
		03038	TRIMBLE, Kimberly Mae
		03055	TROMBETTI, Anthony

Decl. No.	Name	Decl. No.	Name
03056	TROMBETTI, Darci Ann	03122	WEATHERFORD, Ramona
03057	TROMBETTI, David Owen	03126	BERNIER, Montese Louise Webb
03058	TROMBETTI, John, Jr.	03127	WEBER, Charles John
03059	TROMBETTI, Michael	03128	WEBER, Lisa La Rae Peterson
03061	TROMBETTI, Pamela Suzette	03129	WEBER, Rodney William
03062	TROMBETTI, Scott	03139	WELCH, Audrey Parks Wyner
03063	TUMULAK, Carol Lynn Patterson	03144	WESTON, Stephen Cleveland
03065	REED, Heidi Marie Tuttle Alameda	03145	WHIPPLE, Aaron Gaylen
03069	VALENZUELA, Michael Paul	03146	WHIPPLE, Andrew, Jr.
03072	VAN LANDINGHAM, Brad	03147	WHIPPLE, Andrew Richard
03073	VAN LANDINGHAM, Harold	03148	WHIPPLE, Calvin Richard
03074	VAN LANDINGHAM, John	03149	WHIPPLE, Cynthia Lynn
03076	VAUGHN, Vina Hufford	03150	WHIPPLE, Clarence Dennie, Jr.
03077	VEGA, Deborah Ann	03151	WHIPPLE, Clarence Bennie, Sr.
03084	VIENNA, Donna Smith	03152	WHIPPLE, Gayleen Alice
03085	VIENNA, Kimberly Marie	03153	WHIPPLE, Kathleen Avis
03086	VALLANEUVA, Zelda Minard	03154	WHIPPLE, Louise H. Moorehead
03104	WARD, Delight Dawn	03155	HANLEY, Mary Louise Whipple
03107	WARREN, Donald Mark	03156	WHIPPLE, Sunnae Marie
03108	WARREN, Violet Rails	03157	WHIPPLE, Thelma Richards
03110	WATKINS, Janice Lynn	03158	WHIPPLE, Tina Marie
03111	WATKINS, John Joseph Wayne	03159	WHIPPLE, Toni Charlene
03112	WATKINS, Linda Marie	03160	WHIPPLE, Valeria Ann
03114	WATKINS, Lionel H.L., III	03161	WHIPPLE, William Frank
03116	WATKINS, Patricia Ann		
03117	WATKINS, Ronald Steven		
03121	WEATHERFORD, Gloria Jean		

Decl. No.	Name	Decl. No.	Name
03162	MILLER, Zelma Green Whipple	03244	WILLIS, Recella L. Oscar
03169	WHITE, Howard Edward	03245	WILLSON, Billie Lynn
03171	WHITE, Leslie Ann	03246	WILLSON, Irene Jewel
03172	WHITE, Luther, Jr.	03249	WILLSON, Teresa Marie
03175	WHITECOMBS, Barbara Dean	03257	WILSON, Carolyn F. Oscar
03176	WHITEHURST, Deanna Russell	03258	WILSON, Christina Marie
03177	WHITEHURST, Walter James, Jr.	03266	WILSON, Juanita Lu Ann
03179	WHITTET, Lottie Junita	03267	WILSON, Kenneth Gene
03187	WILCHER, Eddie Lee	03268	WILSON, Lester Lee
03188	WILCHER, Evelyn McClung	03270	WILSON, Mary Jane Lerdahl Hubbard
03194	WILDER, George L.	03272	WILSON, Robert Linwood, Jr.
03200	WILDER, Lenny Allen	03276	WILSON, Shirley Ann
03206	WILDER, Martin Jay	03280	WINTER, Claudia Jean
03208	JANTZ, Rebecca Anne Wilder	03281	WINTER, Cynthia Lynn
03211	WILDER, Stanley Martin, Jr.	03283	WINTER, Jeffrey Michael
03214	WILKINSON, Beverly Arlene Sharp	03284	WINTER, Nancy Sue
03215	WILKINSON, Marie Elena	03285	WINTER, William Charles
03216	WILKINSON, Vera Mae Kimsey	03288	WINTON, Clifford Lynch
03220	WILLIAMS, Desma Marie	03289	WINTON, Louise J.
03228	WILLIAMS, Lila Lee	03291	WINTON, Paul, Jr.
03234	WILLIAMS, Tami Lynn	03293	WISEMAN, Drew Michael Schamehorn
03238	WILLIAMSON, James D. Donald	03303	WORTH, Gerald Irvin
03239	GAYLOR, Cara Lee Willis, Jr.	03306	WRIGHT, Vera Vivian
03240	WILLIS, Carroll Mark, Jr.	03307	WYMER, Keith Glenn
03241	WILLIS, Earl Mark	03308	WYMER, Laura Kay Browning
03242	WILLIS, Gary Newman	03318	ZAPPELLI, Amelia Clair
03243	WILLIS, Marie Ann	03319	ZAPPELLI, Lisa R.
		03320	ZAPPELLI, Margo C.
		03321	ZAPPELLI, Mark J.
		03322	ZAPPELLI, Mary

Decl. No.	Name	Decl. No.	Name
03323	ZAPPELLI, Michael G., Jr.	03378	MARCH, Leanne Lynn Cantwell
03325	ALCORN, Betty Lou	03379	FETTERS, Brenda
03326	ALCORN, Todd Lee	03380	BURDICK, Gladys Ione Aubrey
03327	ALLY, Michelle L.	03383	CANNON, Carri Gayle
03328	ANDERSON, Judith Ann Lawson	03384	CANNON, Catheryn
03329	AUBREY, James LeRoy	03385	CANNON, Cindy L.
03333	BARTLETT, Barbara Ann	03386	CANNON, Gayle A.
03334	BARTLETT, Claire June Renwick	03387	CANNON, Leslie M.
03335	BARTLETT, Gail Lynn	03388	CANNON, Rick W.
03336	BARTLETT, Julie Claire	03389	CANNON, Robert G.
03338	BAUM, Charles Shane	03391	CARLSON, Karrie Lynn
03340	BECK, Lloyd T.	03396	CARPENTER, James Alvin, Jr.
03341	BECK, Paul Gary	03397	CARPENTER, Joseph Mark
03342	BECK, Paul G.	03398	CARPENTER, Loie Eileen
03343	BECK, Ruth (Aubrey)	03399	CARPENTER, Mary May
03344	BEICHTEL, Barbara Ann	03400	CHASE, Arthur Wesley
03346	BERGER, Joanelle Jo	03401	CHASE, Edward M.
03347	BERGER, Joannie Jo	03402	CHASE, Francis Melvin
03348	BERGER, Michael William	03403	CHASE, Richard
03348	BERGER, Darlene	03404	CHASE, Robert Eugene
03350	BEST, John Allen	03405	CHRISTIANSEN, Ethelynn M.
03351	BEST, Ronald Arnold	03406	CLARK, Shirley Ann Halstead
03352	BILLIE, Kenneth George Filder	03410	COLLINS, Angela Kay
03353	BISKORN, Janice Kay	03411	COLLINS, Cheryl Ann
03354	BISKORN, Mark Lane	03412	COLLINS, Deloris Ann
03355	BISKORN, Norma Jean	03413	COLLINS, Derick J.
03356	BISKORN, Rodney Allen	03414	COOKE, Allison Anthony
03359	BLAKE, Vicki Lee Pallin	03415	COOKE, Bernard Wayne
03361	BLOYD, Mary Ann	03416	COOKE, Joseph Bedford
03362	BOLLAN, Joyce Marie	03417	COOKE, Thomas Lester
03371	BROWN, Connie Rae Freeman	03419	COOLEY, Dale Michael
03374	BROWN, Irvin Frank	03421	COOLEY, David Wayne
		03422	COOLEY, Debra Lynn

Decl. No.	Name	Decl. No.	Name
03424	COOLEY, Donald Lee, Jr.	03495	FREEMAN, Arbee, Jr.
03428	COOLEY, Sharla Renee	03496	FREEMAN, Arbee, Sr.
03430	CRITESER, Caroline M.	03497	FREEMAN, Cheryl
03431	CRITESER, Raymond L.	03498	FREEMAN, David
03432	CRITESER, Sam W.	03499	FREEMAN, Kristi Ann
03433	CRITESER, Sami J.	03500	FREEMAN, Ted L., Jr.
03434	CRNICH, Becky Lee	03501	FREEMAN, Ted L., Sr.
03438	CRONE, Marian L.	03502	FREIERMUTH, Margaret
03440	DAGGETT, Dolly	03507	FRYE, Kathryn A. Van Pelt
03445	DONAHUE, Juanita Rose	03508	FRYE, Kelly Jean
03446	DONAHUE, Lelanette	03513	GACHES, Tammi Lynn
03447	DONAHUE, Troy Lee	03514	GODFREY, August Fillmore
03456	DOWNS, Veronica	03516	GRAHAM, Glenda Marie
03458	DOYLE, Bobby	03517	GRAHAM, Pamela K.
03463	EINMAN, Elizabeth Ann	03518	GRANT, Darcy Renae
03465	ERICKSON, Angel	03519	GRANT, Hugh W., III
03466	ERICKSON, Axel V., III	03520	GRANT, Joseph V.
03470	ERICKSON, Lorenzo	03521	GRANT, Julia L.
03471	ERICKSON, Sharon	03522	GRANT, Roberta M.
03473	EVANS, Gary Lane	03523	GRAY, Vivien Elva Chase Wilder
03483	FLETCHER, Jacqueline Ehrlich	03525	CREWS, Evelyn V. Jurin McClellan
03484	FLETCHER, Talitha Ann	03526	GREEN, George S.
03485	FLETCHER, Tami Raquel	03529	GREEN, Theodore F.
03486	FLETCHER, Tiana Linn	03531	GREEN, Virgil L., Jr.
03487	FLETCHER, Tiffany Grace	03537	GROOTENDORST, Marjorie Freeman
03488	FLETCHER, Troy Steven	03538	HAILSTONE, Albert Franklin
03489	FOSTER, Alfred Andrew	03539	HAILSTONE, John T., Jr.
03490	FOSTER, Dorothy Amanda	03540	HAILSTONE, John Thompson, Sr.
03491	FOSTER, Hilda Jane Jackson	03541	HAILSTONE, Mark Chester
03492	FOWLER, Merle Lee	03542	HAILSTONE, William Michael

Decl. No.	Name	Decl. No.	Name
03543	HAILSTONE, Zachariah Eugene	03619	MAGER, William John
03547	HEWITT, Bertha Vallance Wilder	03622	MARSHALL, Eunice Bartow
03553	HUGHES, Mary Ann	03623	MARSHALL, Thelma Green
03556	JACKSON, Pearl Elva Green	03625	MASTER, Robert
03559	JAKE, Tamra Marie	03626	AYER, Bonnie Marie Miller
03560	JAKE, Teddy Steven	03628	MELVIN, Charles Matthew
03568	JOHNSON, Laureen F. Siipola	03629	METCALF, Belle Joanna
03570	JOHNSON, Marguerite Minta Miller	03630	METCALF, Bonnie Rae
03577	KEISNER, Lornie Leland	03631	METCALF, Steven Joe
03580	KELLING, Francine	03632	MILLER, Alan F.
03582	KERWIN, Melody C.	03633	MILLER, Arthur W.
03583	KIDD, James Saxie	03634	MILLER, Keith Lane
03584	KING, Deborah Eileen	03635	MILLER, Ralph Duane
03585	KING, Kenneth R., Jr.	03642	MOORE, David Eric
03587	KING, Odessa M.	03645	MOORE, Gary Alvin
03588	KING, Randy Verne	03647	MOORE, Gregory Alan
03590	KINNEY, Joyce L.	03648	MOORE, Joyce P.
03591	KINNEY, Randy L.	03649	MOORE, Sandra Lee Freeman
03592	KULA, Joshua W.	03652	MOULTON, Charles A.
03593	LAAM, John Harvey	03653	MOULTON, Chris A.
03595	LAMBERSON, Andrew James	03654	MOULTON, Clyde R., Jr.
03600	LAWRENCE, Faye	03655	MOULTON, Eugene R.
03602	LEIS, Henry S.	03656	MOULTON, Marguerite V. Beach
03603	LETSON, Daniel Jay	03657	MOULTON, Michael R.
03609	LOPEZ, Albert Miles	03658	MOULTON, Robert L.
03610	LOPEZ, Danny Joseph	03659	MULKINS, Nola May Letson
03611	LOPEZ, Debra Kay	03660	MULLEN, Richard Duane
03612	LOPEZ, Edward Joseph, Jr.	03662	MURPHY, Lana D. McClung Baum
03613	LOPEZ, Russell William	03663	MYERS, Dewey
03614	LOTT, Christopher Murphy	03664	MYERS, Harold L.
03615	LOTT, Ethel Laurie Green	03665	MYERS, Louis S.
03617	MABRY, Sheryle Green	03667	MYERS, Melissa Starr
03618	MAGER, Wesley Benjamin		

Decl. No.	Name	Decl. No.	Name
03669	MCBATH, Emma Hailstone	03714	ORCUTT, Wayne Leonard
03670	MCBATH, Michael A.	03715	OVERMAN, Brenda Lou
03671	MCCLUNG, Edison Charles	03719	PARKER, Keith A.
03672	MCCLUNG, Edison Otto	03721	PITTMAN, Anita Jo
03673	MCCLUNG, Evette Melissa	03722	PITTMAN, Chester R.
03674	MCCLUNG, Evonne L.	03723	PITTMAN, Chester R., III
03675	MCCLUNG, Howard R.	03724	PITTMAN, Michael D.
03676	MCCLUNG, Jennifer	03725	PITTS, Mary Jean
03677	MCCLUNG, Keily A.	03726	PITTS, Nancy Jean
03678	MCCLUNG, Larry	03727	PLUMMER, Daniel R. Woodhurst, Jr.
03679	MCCLUNG, Linda K.	03728	PONTE, Letty
03680	MCCLUNG, Tamara	03729	POWELL, Linda
03681	MCCLUNG, Ted Leon	03732	QUILLEN, Marlene Mae Miller
03682	MCCOVEY, Barry Wayne	03736	QUINN, Jessie Ann
03683	MCCOVEY, Diana L. McKinnon	03737	QUINN, Larry
03684	MCCOVEY, Terry	03738	RANTS, Idell
03686	MCLAUGHLIN, Jennifer L.	03740	RENWICK, Bernice Alta
03692	NELSON, Elizabeth Ann	03741	RENWICK, Robert Irving
03693	NELSON, Elizabeth Inga	03742	REYNOLDS, Lois Jean
03697	NELSON, Richard Nicholas, III	03746	RINDELS, Gaylon Dale
03698	NELSON, Rick Eugene	03748	ROBERTS, Koren Ann
03699	NELSON, Richard Robert	03750	ROBERTS, Veronica L.
03700	NELSON, Rollie Samuel	03752	SAMPELS, Brandon
03701	NELSON, Ross Allen	03754	SANDERSON, Benjamin Franklin
03703	NEVAREZ, Deana Nanette	03755	SCOTT, Jennie Ruth Marrufo
03704	NAVAREZ, Shay-Killi-Jeffe	03756	SCOTT, Joe Basilio
03705	NIX, Lorrie Sue	03757	SCOTT, Shane
03708	NOTTINGHAM, Curtis	03759	SCOTT, William John, III
03709	O'CONNER, Eugenia Tina	03760	SHAMP, Delbert Deloss, III
03712	ORCUTT, Harvey Brent	03761	SHAMP, Dorothy Mae Cooley
		03762	SHAW, Glenna Rae

Decl. No.	Name	Decl. No.	Name
03769	SNYDER, Carl Burt	03811	VANCE, John
03770	SNYDER, Victoria		McGreagor, Jr., IV
	Violet	03812	VAN PELT, Carol Ann
03771	SOUSA, Joey Francisco	03817	VAN PELT, Kelly Ann
03775	SPOTT, Tina Marie	03821	WAGGLE, Lavertta
03777	STEVENS, Clark Gerald		June
03778	STEVENS, Wilma	03822	WAGGLE, Monica
	Myrtle Chase		Cleone
03779	STRONG, Marian Molly	03825	WALTON, Morris
03781	STUECKLE, Patricia		William, Jr.
	Ann Keisner	03826	WALTON, Steven Jay
03782	SUMMERS, Barbara	03827	WARD, Amber D.
	Jean	03830	WARRINGTON,
03783	SURBER, Clarence Ray		Rochella Lynn
03784	SURBER, Frank Owen	03831	WARRINGTON, Shirley
03785	SUBER, Gordon Terry		E.
03786	TAYLOR, Lawrence D.	03833	WHITEHURST, Dennis
03787	TAYLOR, Michael S.		Lee, Jr.
03790	THOMPSON, Darrin	03835	WILDER, Irving F.
03792	THOMPSON, Kevin	03838	WOKFIN, Margaret
03794	THOMPSON, Sabrina		Jane
03797	THRASHER, Bradley	03841	WOOTEN, Claude
	James		Eugene
03801	TOWNSEND, Sherry L.	03842	WOOTEN, Ione Louise
03802	TOWNSEND, Stephanie	03844	WRIGHT, Verna Mae
03809	TURNER, Michael Irvin	03846	ZABEL, Allan

Category 6 Subtotal: 1,547

GRAND TOTAL OF ALL CATEGORIES: 3,850

MAY 22 1984

ALEXANDER L. STEVENS, CLERK

No. 83-1555

IN THE

**Supreme Court of the United States**

October Term, 1983

HOOPA VALLEY TRIBE OF INDIANS,

*Petitioner,*

v.

JESSIE SHORT, ET AL.,

*Respondents.*RESPONSE OF CERTAIN RESPONDENTS TO PETITION FOR WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT.*and to*MOTION OF TIMBER RESOURCES TRIBES AND OTHER TRIBES  
FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT  
OF PETITIONER HOOPA VALLEY TRIBE OF INDIANS FOR  
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT.

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BRYAN R. GERSTEL

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RESPONSE OF CERTAIN RESPONDENTS TO PETITION FOR WRIT OF  
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*and to*

MOTION OF TIMBER RESOURCES TRIBES AND OTHER TRIBES  
FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT  
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WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT.

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## STATEMENT OF THE CASE

The instant case was initiated in March 1963, on behalf of certain of the Respondents (Plaintiffs in the Claims Court), seeking to appear as representatives of a class, to secure for those Indians of the Hoopa Valley Reservation who are not members of Petitioner, Hoopa Valley Tribe, aliquot shares of the profits derived from the sale of timber resources found on the unallotted land of a portion of the Reservation (the Square). These unallotted lands are held in trust for the Indians by the United States.

After an unsuccessful motion in the Court of Claims to dismiss the action, the United States requested that the complaint be amended to include as named Plaintiffs all claimants meeting the standards of the class of Indians who would be entitled to recover if the court entered judgment in their favor. The complaint was subsequently amended to set forth the names of 3,323 individual Plaintiffs.

To simplify the litigation, the cases of 26 of these Plaintiffs were chosen for trial. In its decision of October 17, 1973, 202 Ct.Cl. 870,<sup>1</sup> the Court of Claims found against the United States on the question of liability, and determined that 22 of the 26 sample Plaintiffs "are entitled to recover in amounts to be determined under Rule 131(c) and the claims of the others are set down for trial in accordance with the opinion." (C 150-151)

In an exhaustive review of the history of the Reservation, the rights of the Indians thereon, the Court of Claims determined that:

1. The Hoopa Valley Reservation was created pursuant to the Act of April 8, 1864, which authorized the President to set apart and locate not more than four Indian reservations in California, of such size as he found suitable, at least one of which was to be in the Northern District, for the accommodation of the Indians of California, without specification of the

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<sup>1</sup>The entire decision is set forth in Appendix C to the Hoopa Valley Tribe's Petition for Writ of Certiorari. All references to the decision are to the appropriate pages of Appendix C.

tribes to be so accommodated. The President had discretion to authorize any Indian tribes of California to reside upon such reservations as he set apart, and no Indian tribe resident upon a reservation created under the Act could obtain vested rights to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation. (C 138)

2. By Presidential Order of June 23, 1876, the Hoopa Valley Reservation was established as one of the Indian reservations authorized to be set apart in California by the Act of April 8, 1864. The area included in the Reservation, pursuant to the Presidential Order, included the land (the Square) upon which exist the timber reserves involved in the instant case. (C 139)

3. By further Presidential Order on October 16, 1891, the boundaries of the Reservation were extended to include additional territory (the Addition) upon which resided the ancestors of most of the Plaintiffs. The court held that "the plain and natural effect of the order was to create an enlarged reservation in which the Indians of the original reservation and the Indians of the added tracts would have equal rights in common." (C 140)

4. In 1950, certain of the Indians on the original portion of the Reservation organized as the Hoopa Valley Tribe. Membership in the tribe was so defined as to exclude from membership a majority of the Indians of the Reservation, including Respondents. (C 124-131)

5. Until 1955, revenues derived from all parts of the Hoopa Valley Reservation were deposited in a single United States Treasury Account. (C 134) Commencing in 1955, however, revenues derived from the sale of timber on the

Square portion of the Reservation were deposited in a separate account and payments of said revenue were made by the United States exclusively to the Hoopa Valley Tribe and its members. (C 135-136)

6. The court held that the United States "acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to income from the unallotted trust status lands of the Square. Such of the Plaintiffs as are found herein to be Indians of the Reservation will become entitled to share in the income from the entire Reservation, including the Square, equally with all othr such Indians including Indians of the Square." (C 144)

7. Twenty-two sample Plaintiffs were determined to be Indians of the Reservation entitled to recover a money judgment from the United States, the amount of which was to be determined under Court of Claims Rule 131(c), after determination of the entitlements of the remaining Plaintiffs. (C 144-151)

In response to the 1973 decision of the Court of Claims, both Petitioner and the United States filed Petitions for Writ of Certiorari in this court. The Petitions were denied, 416 U.S. 961, and rehearing was also denied, 417 U.S. 959.

Thereafter, on April 23, 1976, the Court of Claims permitted the intervention of an additional 515 Plaintiffs and ordered that "to the extent that this action has been treated as a class action, it is ordered that the class is hereby closed. . . ." (Order of April 23, 1976, 209 Ct.Cl. 776.)

Subsequent to the Court of Claims' 1973 determination of the Government's liability, a complex procedure was established by the trial judge, in consultation with the parties,

through which the individual entitlement claims of the various Plaintiffs could be advanced and/or challenged. This procedure included the preparation of a detailed declaration questionnaire by each individual Plaintiff, describing his or her ancestry, Indian blood degree, and association with the Hoopa Valley Reservation. Petitioner and the United States, in turn, prepared detailed responses to each of these declaration questionnaires; and Plaintiffs' counsel then prepared an individual reply to each of the joint responses by Petitioner and the United States.

Following this process, a series of motions and cross-motions for summary judgment were offered in the Court of Claims with the result that the entitlement of an additional 120 Plaintiffs was conceded, and summary judgment for said Plaintiffs was granted in orders dated December 3, 1976, February 25, 1977, and April 27, 1978. Motions for summary judgment approving the claims of the remaining Plaintiffs, and cross-motions by Petitioner and the United States to deny those claims, were fully briefed before the trial judge in 1977.

On May 23, 1979, the United States made a motion to substitute a "Yurok Tribe" for the individual named Plaintiffs, and on November 16, 1979, Petitioner was granted leave to file a motion to dismiss the case on the theory that the formulation of entitlement standards by the court involved the determination of a non-justifiable political question.

On September 23, 1981, the Court of Claims upheld the recommended decision of the trial judge to deny both the motion of the United States and the motion of Petitioner.

(B 39)<sup>2</sup> The court held that all of the issues raised by the motions had been repeatedly rejected during the course of the litigation. (B 31 and 35)

Noting that "this suite was begun in 1963 and, except for cases transferred to us from the Indians Claims Commission, it is the oldest case on our docket," (B 36) the Court of Claims ordered the entitlement proceedings expedited, and remanded the matter to the trial judge "to issue by April 1, 1982, a recommended decision determining, under standards he will formulate in accordance with this opinion, which of the plaintiffs whose cases are ready for disposition are Indians of the Reservation." (B 39)

As a matter of guidance to the trial judge in determining entitlement standards, the court said:

"The timber revenues that the Secretary distributed to individual Hoopa Indians beginning in 1955 were paid to those persons whom the Hoopa Business Council had determined to be members of the Tribe. . . . In determining the membership of the Hoopa Tribe (to whom the Secretary made the payments), the Hoopa Business Council used a detailed and carefully drawn set of standards. We described and explained these standards in our findings in our 1973 decisions. Fdgs. 137-45, 148, 152(c), 155-56, 202 Ct.Cl. at 959-67. The Secretary approved both the Hoopa Constitution (which specified the standards for membership in the Hoopa Valley Tribe,

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<sup>2</sup>The entire decision is set forth in Appendix B to the Hoopa Valley Tribe's Petition for Writ of Certiorari. All references to the decision are to the appropriate pages of Appendix B.

fdg. 145, 202 Ct.Cl. at 962) and two schedules which listed most of the Indians who had been determined to be members of the Tribe. Fdg. 153, 202 Ct.Cl. at 964. . . .

“The Hoopa Tribe standards . . . provide an appropriate guideline and basis for determining which of the plaintiffs are entitled to share in the timber payments because they are Indians of the Reservation. Those are the standards the trial judge basically should apply in deciding the question.” (B 37, 38)

Again, Petitioner and the United States filed Petitions for Writ of Certiorari in this court, and, again, the Petitions were denied. 455 U.S. 1034.

On March 31, 1982, the trial judge issued an opinion in which he established standards, adapted from the enrollment standards of Petitioner, to be used in qualifying the various Plaintiffs as Indians of the Hoopa Valley Reservation. By application of these standards, the trial judge determined that an additional 2,161 Plaintiffs were entitled to recover in these proceedings. (Appendix I to the Petition) Pursuant to an order of the Court of Appeals for the Federal Circuit to which the case was transferred on October 1, 1982, under Section 403 of the Federal Courts Improvement Act of 1982, (A 2)<sup>3</sup> the Court of Appeals allowed the United States and Petitioner to file new motions to dismiss for an alleged lack of jurisdiction. (A 2) The Court of Appeals then denied the motions to dis-

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<sup>3</sup> Appendix A to the Hoopa Valley Tribe's Petition for Writ of Certiorari is the entire October 6, 1983 decision of the Court of Appeals for the Federal Circuit. All references to the decision are to the appropriate pages of Appendix A.

miss for an alleged lack of jurisdiction. (A 2) The Court of Appeals then denied the motions to dismiss (A 9), and sustained the entitlement decision of the trial judge without change, noting that "all parties' objections to the trial judge's standards and to his conclusions of law are disapproved." (A 20)

On March 3, 1984, Petitioner filed its Petition for Writ of Certiorari.

In April 1984, the Timber Resources Tribes and Other Tribes filed a motion for leave to file a brief as amici curiae in support of the Petition for Writ of Certiorari.

#### SUMMARY OF ARGUMENT

1. The instant case, which is now 21 years old, will never be concluded if Petitioner is permitted to again and again relitigate questions already decided by the courts. Petitions for writ of certiorari by the same Petitioner were denied in 1974 and 1981.

In its rejected 1981 petition, Petitioner presented an argument with regard to interpretation of 25 U.S.C. Section 407, the timber sales proceeds statute. Petitioner's interpretation of the statute is not supported by either the language of the Act, or its history.

Petitioner would deny a recovery to Respondents by defining the word "tribe" to include only formally organized entities such as itself; but this proposed definition does not comport with the history of the Indians of California, Congressional definitions of Indian tribes, or the decisions of the courts.

2. The Court of Appeals has determined that criteria comparable to the enrollment standards of the Hoopa Valley Tribe should be applied to all of the Indians of the Hoopa Valley Reservation for purposes of determining entitlement

to recover in this proceeding. It stretches credibility too far for Petitioner to argue that these enrollment standards are permissible when applied to the Indians who are members of the Hoopa Valley Tribe, but constitute an impermissible racial classification when applied to other Indians of the Reservation.

3. Nothing in the decision of the Court of Appeals affronts the decision of this court in *United States v. Mitchell*, — U.S. —. 103 Sup.Ct. 2961 (1983) (hereafter *Mitchell II*). Nor does the decision either "erect a serious hindrance to effective administration of the Indian timber harvest statute" (Petition, p. 10), or set "a dangerous and disruptive precedent for other areas of the law where tribal rights are asserted." (Petition, p. 18)

These arguments presented by Petitioner are wholly specious and constitute a cloak behind which Petitioner seeks to continue the misapplication of the proceeds of the reservation's trust assets for the benefit of the Hoopa Valley Tribe only, at the expense of the majority of the Indians of the Reservation.

## ARGUMENT

### I

IN ITS PETITION, THE HOOPA VALLEY TRIBE MAKES THE SAME ARGUMENT WITH REGARD TO 25 U.S.C. SECTION 407 THAT IT MADE IN ITS REJECTED 1981 PETITION FOR WRIT OF CERTIORARI. NOTHING HAS OCCURRED SINCE 1981 TO CAUSE THIS COURT TO REVERSE ITS PRIOR REFUSAL TO GRANT THE PETITION.

Petitioner argues in 1983, as it argued in 1981, that 25 U.S.C. Section 407, the statute which provides for the distribution of proceeds from reservation timber sales has applicability only to tribes, and not to unorganized Indians of the Reservation. This argument has been rejected by the trial court, the appellate court, and by this Court in its denial of Petitioner's 1981 Petition for Writ of Certiorari.

Petitioner now falsely argues that it was deprived of due process of law by being denied an opportunity to present evidence and argument as to its interpretation of 25 U.S.C. Section 407. Petitioner had full opportunity to present its argument in the court below, and did so.

The parties' respective interpretations of 25 U.S.C. Section 407 were fully briefed and argued before the Court of Appeals in 1983, both in connection with Petitioner's motion to dismiss the instant case, and in the supplemental memoranda filed by the parties with regard to the decision of the United States Supreme Court in *Mitchell II, supra*.

Contrary to Petitioner's contention, the Court of Appeals did not concede any jurisdictional defect in its prior decisions in the instant case, but found Section 407 an additional basis upon which the liability of the Government to Respondents could be sustained. The court said:

"Both movants (the Government and the Hoopa Valley Tribe) . . . make much of the fact that the Act of April 8, 1864, 13 Stat. 39 [App. 55-56], which authorize the establishment of the Hoopa Valley Reservation and on which the Court of Claims primarily based its determination that qualified plaintiffs were entitled to share in the disputed monies (although they were not members of the Hoopa Valley Tribe), did not contain any authorization to the Government to sell or manage timber or empower the Government to distribute the proceeds. That may be true but it is irrelevant to the jurisdictional point before us. When this action was begun in 1963, the timber management legislation (mainly 25 U.S.C. §§ 405-407) and the regulations thereunder, which do sustain jurisdiction, had long been on the books and covered all the monies claimed in the suit. . . . The function of the 1864 statute is to help show that the Government had a fiduciary relationship toward qualified Plaintiffs with respect to the Hoopa Valley Reservation and also to show that the Secretary's action in excluding all but members of the Hoopa Valley Tribe from the distribution of the monies was unlawful."

(A 6)

Petitioner misconstrues Section 407, both as it was originally written in 1910 and as it was amended in 1964.

From 1910 until enactment of the 1964 amendment, Section 407 directed that timber on unallotted reservation lands may be sold and the proceeds "used for the benefit of the Indians of the reservation in such manner as (the Secretary of the Interior) may direct." In 1964, the statute was amended to substitute the term "Indians who are members of the tribe or

tribes concerned" for the term "Indians of the reservation".

The legislative history of this amendment to 25 U.S.C. Section 407 clearly shows that the amendment was not designed to limit distribution of timber proceeds to "organized tribes" as opposed to other Indians of the reservation. Rather, the term "Indians of the reservation" had been interpreted to permit distribution only to Indians resident on the reservation. The term "members of the tribe or tribes concerned" was substituted in order to allow distribution of revenues derived from timber sales "for the benefit of tribal members rather than, as under present law, only those who live on the reservation concerned." (Legislative History, Appendix G to the Petition, pp. 173 and 175) The purpose of the amendment was to enlarge participation in the distributions, not contract such participation.

Neither the pre-1964 nor post-1964 versions of the statute can be read to justify discriminatory distribution of revenues by the United States to the members of a single tribe at the expense of other equally entitled Indians of the Reservation.

The Hoopa Valley Reservation was created for the benefit of all California Indians who settled there, without regard to membership in officially organized tribes. Petitioner did not organize until 1950, 40 years after 25 U.S.C. Section 407 was adopted. Under Petitioner's interpretation of the statute, no Indian of the Hoopa Valley Reservation could benefit from the 1910 Act until the Hoopa Valley Tribe organized in 1950. Such a result cannot be harmonized with the clear and unambiguous language used by Congress when it enacted the statute.

Petitioner presents, as if determinative, certain testimony at closed Congressional Committee and Subcommittee hear-

ings on the 1964 amendments to 25 U.S.C. Section 407. (Petition's Appendix G, 178-193) The testimony upon which Petitioner relies is primarily that of Graham Holmes, a witness at the hearings on behalf of the Bureau of Indian Affairs. In addition to Mr. Holmes' testimony at the 1964 hearings, Petitioner presents a recent affidavit of Mr. Holmes purporting to: (1) construe the unambiguous terms of the 1910 Act, and (2) establish Congress' intent with regard to the 1964 amendments.

Unpublished material which was never available to the legislators voting on an Act is worthless to establish legislative intent. Even if it had been published, Mr. Holmes' personal views cannot alter the perfectly clear language of the 1910 Act, or be considered to determine what Congress intended with regard to the 1964 amendments.

The 1910 version of 25 U.S.C. Section 407 provides in relevant part:

“ . . . the proceeds from such sales shall be used for the benefit of Indians of the reservation. . . . ”

This language could not be clearer. All Indians of the reservation are entitled to share in the proceeds from timber sales.

When a statute is clear on its face, it is not necessary to resort to legislative history. *U.S. v. Oregon*, 366 U.S. 643, 648 (1961); *National Home v. Wood*, 229 U.S. 211, 216 (1936). Rather, the unambiguous wording of the statute shall be given its plain and commonly understood meaning. *Selman v. United States*, 498 F.2d 1354, 1356 (Ct.Cl. 1974).

Even if the statute was ambiguous, however, Mr. Holmes' personal views cannot be used to construe the terms of either

the 1910 Act or its 1964 amendments. Mr. Holmes is not, and has never been, a member of Congress. His testimony in 1964 was presented 54 years after the 1910 Act was passed. His recent affidavit was prepared 73 years after the Act was passed.

Expressions of legislators in an attempt to establish the intent of Congress in an earlier act are not accepted as authority, and even statements made by Congressmen during the debates prior to passage of a bill are not a safe guide to interpretation of a statute. *United States v. Mineworkers*, 330 U.S. 258, 276-277, 284 (1947).

It has been specifically held that the opinions of witnesses at congressional hearings are of dubious value in interpreting a statute. *March v. U.S.*, 506 F.2d 1306 (CADC 1974). Congress has not delegated to organizations or individuals appearing before its committees the authority to construe a statute. *U.S. v. Fairfield Gloves*, 558 F.2d 1023 (Ct. Cust. & Pat. App. 1977). The Supreme Court has stated that courts should be wary of testimony before a committee hearing except for testimony by the legislators who were the sponsors of the proposed laws, and concerning a precise analysis of the statutory phrases. *S & E Contractors, Inc. v. U.S.*, 406 U.S. 1, 13 (1971). The views of witnesses are not necessarily the same as those of the legislators voting on the bill. *Harry Fox Agency, Inc. v. Mills Music*, 543 F.Supp. 844, 864 (DCNY 1882).

## II

### PETITIONER'S ENROLLMENT STANDARDS, AS APPLIED TO RESPONDENTS FOR PURPOSES OF DETERMINING ENTITLEMENT TO SHARE IN REVENUES DERIVED FROM THE RESERVATION'S UNALLOCATED TIMBER RESOURCES, DO NOT CONSTITUTE AN IMPERMISSIBLE RACIAL CLASSIFICATION.

Petitioner argues that Indians may be defined only in terms of organized tribes. This argument flies in the face of: (a) the contrary definitions of "Indians" which have been enacted by Congress; (b) the decisions of the courts which recognize the rights of both individual Indians and members of organized tribes; and (c) the particular history and development of the Indian people of the State of California and of the Hoopa Valley Reservation.

The narrow tribal definition of Indians advanced by Petitioner would shear from a majority of the Indians of the Hoopa Valley Reservation any recognition of their native American heritage.

Congress has fashioned many different definitions of the term Indian to meet the specific requirements of differing circumstances. 25 U.S.C. Section 479, part of the Indian Reorganization Act of 1934, defines Indians for purposes of the Act, as: (a) all persons of Indian descent who are members of any recognized tribe now under federal jurisdiction; (b) all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation; and (c) *all other persons of one-half or more Indian blood.*

25 U.S.C. Section 480 defines an Indian, for purposes of eligibility for certain loan funds, as *an individual of no less than one-quarter degree of Indian blood.*

25 U.S.C. Section 482 provides for revolving fund loans to "tribes, bands, groups, and *individual Indians* not otherwise eligible for loans" under certain acts. (Emphasis added) The statute further provides that "no portion of these funds shall be loaned to Indians of less than one-quarter Indian blood."

25 U.S.C. Section 2201 defines Indian as "any person who is a member of a tribe or *any person who is recognized as an Indian by the Secretary of the Interior.*" (Emphasis added)

The Indians of California are defined in 25 U.S.C. Sections 651 and 659 by reference only to ancestry, and without reference to either tribal affiliation or blood degree, as "all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said state." (Emphasis added)

During the years prior to 1950, when there were no organized tribes on the Hoopa Valley Reservation, Congress repeatedly made appropriations for the Indians of the Reservation in substantially the following language:

"For support and civilization of Indians under the jurisdiction of the following agencies, to be paid from the funds held by the United States in trust for the respective tribes, not to exceed the sums specified in each case, to wit: . . . Hoopa Valley (specified amount)." 42 Stat. 567 (1922); see also 41 Stat. 1247 (1921); 43 Stat. 411 (1924); 43 Stat. 1161 (1925); 50 Stat. 586 (1937).

In each of these statutes, Congress used the term tribe to refer to all Indians of the Hoopa Valley Reservation in spite of the fact that there were no officially organized tribes on the Reservation until 1950.

What these enactments show is that the various methods of defining an Indian have been established to meet the requirements of specific circumstances. The statutes recognize the rights of individual Indians, as well as members of tribes, and even the word "tribe" is used with different meanings in different contexts.

Unlike some other parts of the country, in California, the concept of Indian tribal organization had little historical meaning. In *The Indians of California v. The United States*, 98 Ct.Cl. 583, 591 (1943), the court noted:

"The Indians of California consist of wandering bands, tribes and small groups who had been roving over the same territory during the period under the Spanish and Mexican ownership, before the Treaty between Mexico and the United States whereby California was acquired by the United States. They had no separate reservations and occupied and owned no permanent sections of land. They and their forebears had roved over this country for centuries."

In *Clyde F. Thompson v. The United States*, 122 Ct.Cl. 348, 356-357, 358-359 (1952), the court described the subsequent devastating impact upon the California Indian community of the "great influx of white people that occurred after 1848." The court concluded that:

" . . . the various bands and groups of Indians in that state have not existed as distinct and recognizable tribes or bands of Indians as they had lived prior to 1848. . . ."

The Court of Claims, in its 1973 decision in the instant case, quoted the Superintendent of the Hoopa Indian Agency in 1929 as stating that:

"They (the Indians of the Hoopa Valley Reservation) have lost tribal affiliation to such an extent that very few of them know what tribe they belong to, and if they name a tribe, it is not a tribe, but a band of Indians named after some local name of a place where they once resided." (C 72)

While the United States has recognized the Hoopa Valley Tribe, and approved its membership standards (C 128-129), the court has also held that the United States "acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to the income from the unallotted trust-status lands on the Square." (C 144)

In order to provide equal treatment of all Indians of the Reservation, the Court of Claims concluded that:

". . . the standards used to determine the membership of the Hoopa Valley Tribe also provide an appropriate basis for determining which of the (Respondents) are Indians of the Reservation. The timber revenue payments were made to those Hoopas who, on the basis of those standards, had been determined to be Indians of the Reservation as the Secretary then viewed that area, i.e., solely the Square. We held in 1973 that 'Indians of the Reservation' were not limited to those of the Square, but also included those of the Addition. The basis that originally were used to determine the Indians of that portion of the Reservation, and which the Secretary of the Interior used in his decision on how to distribute the timber profits for the benefit of the Indians of the Reser-

vation, are no less appropriate to determine the additional persons whom we have held are also Indians of the Reservation." (B 37)

In the instant case, the court has acted to achieve equality of treatment, not to impose on Respondents an impermissible racial classification. It is the height of hypocrisy for the Hoopa Valley Tribe to argue that its enrollment standards are a suitable basis for determining the right to timber revenue distributions for some Indians of the Reservation, while the same standards constitute an impermissible racial classification when applied to other Indians of the Reservation.<sup>4</sup>

The "racial classification" argument of the Hoopa Valley Tribe is patently without merit.

### III

#### THE COURT OF APPEALS HAS CORRECTLY HELD THAT THERE IS :TUCKER ACT JURISDICTION IN THE INSTANT CASE, FOUNDED UPON STATUTES WHICH CREATE SUBSTANTIVE RIGHTS TO MONEY DAMAGES.

Prior to the 1983 Supreme Court decision in *Mitchell II, supra*, Petitioner argued that there had been no waiver of sovereign immunity in the instant case. Having lost that battle, Petitioner now retreats to the equally untenable argument that none of the statutes upon which Respondents rely, and upon which the Court of Appeals based its decision, can

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<sup>4</sup>Petitioner urges this court to grant certiorari on the theory that Respondents have no rights as Indians because they are not members of an organized tribe. (Petition, p. 17) At the same time, Petitioner argues that Respondents comprise the "Yurok Tribe" as a "federally-recognized tribe . . . not formally organized and its membership is undefined. 48 F.Reg. 56865 (December 23, 1983)." (Petition, p. 3, fn. 2)

be fairly interpreted as mandating compensation for the damages sustained. This argument, too, is without merit.

*A. The 1864 Act Establishing the Hoopa Valley Reservation.*

In *Mitchell II*, the court described "the undisputed existence of a general trust relationship between the United States and the Indian people. This Court has previously emphasized 'the distinctive obligation of trust incumbent upon the Government in its dealing with these dependent and sometimes exploited people.' This principle has long dominated the Government's dealings with Indians." (citations omitted) (at p. 2972) The court then added:

"This Court and several other federal courts have consistently recognized that the existence of a trust relationship between the United States and *an Indian* or Indian tribe includes as a fundamental incident the right of an injured beneficiary to sue the trustee for damages resulting from a breach of the trust." (at p. 2973) (Emphasis added)

Under the Act of 1864, which established the Hoopa Valley Reservation, the United States holds the Reservation land and resources in trust for the Indians of the Reservation. In 1973, the Court of Claims found that the United States had violated its trust responsibility to Respondents by conveying to Petitioner the portion of the revenue derived from the unallotted trust resources of the Reservation which should have

been conveyed to Respondents. This breach of trust is actionable.<sup>5</sup>

The sovereign immunity of the United States has been waived pursuant to 28 U.S.C. Section 1491. As the Court of Claims said in *Mitchell v. United States*, 664 F.2d 265, 268 (1981), statutes mandating compensation are not only "those which expressly authorize the payment of the money sought (and proved). As we understand them, neither *Testan* (*United States v. Testan*, 424 U.S. 392, 400 [1976]) nor *Mitchell*, *supra*, excludes all non-express indications of the right to compensation, no matter how strong or compelling they may be. . . . [T]he Supreme Court's decisions do not say that the substantive right to money must always be explicitly stated in the substantive legislation itself."

Certainly, by implication, the 1864 Act conveys to Respondents a right to sue.

#### B. 25 U.S.C. Section 407.

In *Mitchell II*, *supra*, the Supreme Court dealt directly with 25 U.S.C. Section 407 and the other sections of law pertaining to sale and regulation by the United States of the timber resources of Indian reservations. The court found:

" . . . the statutes and regulations now before us clearly give the Federal Government full responsibility to manage Indian resources and land for the benefit of the Indians. They thereby establish a fiduciary relationship

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<sup>5</sup>The misapplication of the funds to which Respondents are entitled also brings the case within the jurisdiction described in *Eastport S.S. Corp. v. United States*, 372 F.2d 1002 (1967), as a situation in which the plaintiff has paid money over to the Government, directly or in effect, and seeks return of all or part of that sum.

and define the contours of the United States fiduciary responsibilities. . . .

*"Because the statutes and regulations at issue in this case clearly establish fiduciary obligations of the Government in the management and operation of Indian lands and resources, they can fairly be interpreted as mandating compensation by the Federal Government for damages sustained. Given the existence of a trust relationship, it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties. It is well-established that the trustee is accountable in damages for breaches of the trust."* (at pp. 2972-2973) (Emphasis added)

C. 31 U.S.C. 1321

This section establishes the trust relationship between the United States and the Indian beneficiaries with regard to proceeds of labor accounts.

The principal source of the funds flowing to the Hoopa Valley Reservation's proceeds of labor account has been sale of the very timber on the unallotted lands of the Reservation which is the subject of the instant suit.

Each of these described statutes is applicable to the instant case, and each provides a basis for suit in conjunction with 28 U.S.C. Section 1491, the Tucker Act.

#### IV

##### THE DECISION OF THE COURT OF APPEALS WILL HAVE NO ADVERSE IMPACT ON THE FEDERAL GOVERNMENT'S ADMINISTRATION OF THE INDIAN TIMBER HARVEST STATUTE, OR THE LAWFUL OPERATIONS OF ANY INDIAN TRIBE IN THE UNITED STATES.

Petitioner argues that:

“Absent review by this Court, the lower court decision will erect a serious hindrance to effective administration of the Indian timber harvest statute.” (Petition, p. 10)

Petitioner also urges the Court to consider “the impact on the tribes themselves of the Section 407 interpretation.” (Petition, p. 11)

It is significant that the United States, which administers the timber program, has filed no petition for writ of certiorari in the current proceeding. The Government certainly would have done so had it shared the concern expressed by Petitioner.

The narrow scope of the Court of Appeals decision is described by the court itself as follows:

“At the close of our opinion we again stress — what the Court of Claims several times emphasized and we have interlaced *supra* — that all we are deciding are the standards to be applied in determining those plaintiffs who should share as individuals in the monies from the Hoopa Valley Reservation unlawfully withheld by the United States from them (from 1957 onward). This is solely a suit against the United States for monies, and everything we decide in that connection alone; neither

the Claims Court nor this court is issuing a general declaratory judgment. We are not deciding standards for membership in any tribe, band, or Indian group, nor are we ruling that Hoopa membership standards should or must control membership in a Yurok Tribe or any other entity that may be organized on the reservation." (A 20)

Thus, the court has made clear that no other tribe or reservation will be affected by the Court of Appeals decision; and there has been no showing that conditions exist on any other reservation comparable to those prevailing on the Hoopa Valley Reservation.

In the more than ten years since the 1973 decision of the Court of Claims (Appendix C), no comparable case has been initiated with regard to any reservation. If such a case should ever be initiated, it would have to be decided on the basis of the statutes, administrative orders, and historical treatment peculiar to the affected reservation.

Petitioner's claim of widespread danger from the decisions in this case is merely another baseless argument advanced by Petitioner in an effort to secure judicial approval of the Government's past policy of taking money belonging to Respondents and misapplying those proceeds to Petitioner's benefit.

V

**NO NECESSITY HAS BEEN DEMONSTRATED FOR THE  
BRIEFS OF AMICI CURIAE AND THE MOTION FOR  
LEAVE TO FILE SUCH A BRIEF SHOULD BE DENIED.**

Certain Timber Resource Tribes and Other Tribes have made a motion for leave to file a brief as amici curiae in support of Petitioner. In its motion, these Tribes admit that

consent for filing of an amicus brief was denied by Respondents, and that Rule 36.1 of this court provides that:

“A motion for leave to file such a brief when consent has been refused is not favored.”

The Amici argue that many statutes, including 25 U.S.C. Section 407 “use the terms ‘tribe’ and ‘Indian’ without definition.” (Motion, p. 2) Amici then ask this Court to perform the legislative function of writing into these statutes a definition of tribe which would abrogate all rights of individual Indians, and of all groups or bands of Indians not operating under an arbitrary form of political organization. Such a definition would, of course, be totally contrary to the history of the Indians of California, and particularly those of the Hoopa Valley Reservation. Great havoc would be wrought if the Court were to attempt to define an Indian tribe in accord with Amici’s admonition “that to constitute an Indian tribe in a legal sense, an entity must, among other things, be recognized by the United States as a distinct political entity possessing powers of self-government and eligibility for special programs and services.” (Motion, p. 3) The instant case is not a proper launching pad for such a far-reaching and mischievous innovation.

The Amici argue that:

“Federal courts have consistently held that, absent allotment, reservation property is tribal property in which individual Indians have no separate interest.” (Motion, p. 7)

It is correct to state that the courts have defined the concept of Indian property as communal. *Journeycake v. Cherokee Nation and the United States*, 28 Ct.Cl. 281, 302 (1893); and

that all tribal lands were held by the Indians as communal property. *Prairie Band of Potawatomi Indians v. United States*, 143 Ct.Cl. 131, 143 (1958).

It does not follow, however, that because all tribal lands are communal, all communal lands are also tribal. Reservations may be set apart for Indian tribes, individual Indians, or both. See for example *Shoshone Tribe v. United States*, 299 U.S. 476, 485-486 (1937), where the court said:

"The United States agreed that the territory described in the treaty now generally known as the Windriver Reservation, would be 'set apart for the absolute and undisturbed use and occupation of the Shoshone Indians . . . and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them.' "

(Emphasis added)

When a recovery is strictly tribal, only members of the tribe may participate in the judgment. *Eastern Band of Cherokee Indians v. United States*, 177 U.S. 288, 308-312 (1885); *Eastern Cherokees v. United States*, 45 Ct.Cl. 229, 234-235 (1910).

On the other hand, where a judgment does not belong exclusively to a tribe, entitled individuals outside its ranks may participate in the recovery. *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73, 82 (fn. 14) (1977).

In the instant case, the Court of Claims found that the Hoopa Valley Reservation was established by statute and executive order for the accommodation of the Indians of California (C 55) and specifically described the unallotted lands of the Hoopa Valley Reservation as "communal lands". (C 52)

There is no reason in logic or law why communal lands of an Indian reservation may not be held in the traditional manner by all of the Indians of a reservation, as opposed to one or more formally organized tribal entities. And, the bestowal on each communal owner of an individual share of a money judgment does not conflict with the continued status of reservation lands as communal.

A monetary judgment award to an individual Respondent in this proceeding will accomplish no more than to vest the right of the successful Respondent in his *distributed share* of the judgment. *Sizemore v. Brady*, 235 U.S. 441 (1914). The Court of Claims' intent not to interfere with the communal ownership of the land is illustrated by the fact that the court denied a motion for intervention in the suit by a number of descendants of the present Respondents, whose participation would have been automatic if Respondents' rights in the land were descendable.

The interest alleged by Amici is remote from the realities of the instant case, and the briefing by Amici would enlarge the scope of the proceedings far beyond anything necessary to dispose of the issues presented by the decision of the Court of Appeals. To the extent that Amici have any genuine interest in the instant case, that interest is protected by Petitioner, whom Amici support.

Even if the Petition for Writ of Certiorari is granted, no benefit would accrue to the Court by the introduction of Amici's speculative concerns on issues not actually presented by the decision of the Court of Appeals.

## CONCLUSION

For the reasons set forth above, and each of them, it is respectfully requested that the Petition for Writ of Certiorari be denied.

These proceedings have already been unreasonably protracted, and it is time to allow the case to go to final judgment in the Claims Court.

Respondents concur with the Court of Appeals which said in its decision:

“We note, finally, our fervent hope that this very old case will speedily be concluded in the light of the trial court’s judgment now affirmed in its entirety by this court.” (A 21)

Dated: May 18, 1984      Respectfully submitted,

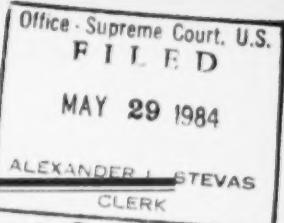
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Nos. 83-1555 and 83-1638



# In the Supreme Court of the United States

OCTOBER TERM, 1983

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HOOPA VALLEY TRIBE OF INDIANS, PETITIONER

v.

JESSIE SHORT, ET AL.

---

CHRISTOPHER EDDY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

---

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

### 1. The question presented in No. 83-1555 is:

Whether the plaintiffs in district court, who are suing as individuals and not as members of an Indian Tribe, nevertheless may be regarded under 25 U.S.C. 407 as "members of the tribe or tribes concerned" with the harvesting of timber on a portion of the Hoopa Valley Reservation and therefore entitled under 25 U.S.C. 407 to share in per capita distributions of the revenues derived from that timber harvesting.

### 2. The questions presented in No. 83-1638 are:

a. Whether the Claims Court erred in denying petitioners' motions for summary judgment on the ground that they had not yet established a sufficient nexus to the Hoopa Valley Reservation to be regarded as "members of the tribe or tribes concerned" and therefore entitled to share in per capita distributions of Reservation timber revenues under 25 U.S.C. 407.

b. Whether the interlocutory decision of the Claims Court granting motions for summary judgment filed by other plaintiffs and denying motions for summary judgment filed by petitioners should be vacated because the same attorneys represented petitioners and the other plaintiffs, even though petitioners' claim of a conflict of interest has not been considered by the courts below and may be raised in the course of further proceedings in the courts below and, if necessary, in this Court.

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*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE  
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---

BRIEF FOR THE UNITED STATES IN OPPOSITION

---

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-23)<sup>1</sup> is reported at 719 F.2d 1133. The recommended decision

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<sup>1</sup> Unless otherwise indicated, all references to "Pet. App." are to the Appendix to the Petition for a Writ of Certiorari filed by the Hoopa Valley Tribe in No. 83-1555.

of the trial judge of the former Court of Claims (83-1638 Pet. App. B1-B101) is unreported. The 1981 *en banc* opinion of the Court of Claims (Pet. App. 24-39) is reported at 661 F.2d 150, and the 1973 opinion of the Court of Claims (Pet. App. 40-151) is reported at 486 F.2d 561.

### JURISDICTION

The judgment of the court of appeals was entered on October 6, 1983. On December 29, 1983, the Chief Justice extended the time for filing a petition for a writ of certiorari in No. 83-1555 to and including March 4, 1984, and the petition was filed on March 3, 1984. On December 30, 1983, the Chief Justice extended the time for filing a petition for a writ of certiorari in No. 83-1638 to and including March 4, 1984, and that petition was filed as of March 3, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). There is, however, a substantial question whether this case was properly "in" the court of appeals and therefore whether it is within this Court's certiorari jurisdiction under 28 U.S.C. 1254(1). See pages 7-8 & note 6, *infra*; 83-1555 Pet. 5 n.3. See, e.g., *Nixon v. Fitzgerald*, 457 U.S. 731, 741-743 (1982).

### STATUTES INVOLVED

The principal statute involved is 25 U.S.C. 407, which was originally enacted by Section 7 of the Act of June 25, 1910, Ch. 431, 36 Stat. 857, and was amended by Section 1 of the Act of April 30, 1964, Pub. L. No. 83-301, 78 Stat. 186. As set forth below, additions made by the 1964 amendment are underscored and deletions made by that amendment are enclosed in brackets:

SEC. 7. The [mature and living and dead and down] timber on unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the

proceeds from such sales, *after deductions for administrative expenses, pursuant to the Act of February 14, 1920, as amended (25 U.S.C. 413)* shall be used for the benefit of the Indians [of the reservation] *who are members of the tribe or tribes concerned* in such manner as he may direct [: Provided, that this section shall not apply to the States of Minnesota and Wisconsin].

#### STATEMENT

1. a. This action was filed in 1963 in the former Court of Claims seeking money damages from the United States for the government's allegedly wrongful exclusion of the individual plaintiffs from participation in past per capita distributions of revenues from the sale of timber on unallotted lands on the original portion of the Hoopa Valley Indian Reservation in California, commonly known as the "Square." This 12-mile square portion of the Reservation was originally located in 1864 by the Superintendent of Indian Affairs for California, pursuant to authority conferred by the Act of April 8, 1864, ch. 48, 13 Stat. 39 (Pet. App. 57), and it was formally set aside by Executive Order of the President on June 23, 1876 (I Kappler, *Indian Affairs* 815 (2d ed. 1904); Pet. App. 67-68). See *Mattz v. Arnett*, 412 U.S. 481, 490 n.9 (1973). By Executive Order dated October 16, 1891 (I Kappler 815; Pet. App. 69), the original Hoopa Valley Reservation was extended to enclose a one-mile wide strip, known as the "Addition" or "Extension," located along the Klamath River between the Square and the Pacific Ocean. See map appended to the Court's opinion in *Mattz v. Arnett*, 412 U.S. at 506; see also *id.* at 494 & n.16; *Donnelly v. United States*, 228 U.S. 243 (1913).

The Square traditionally has been occupied by the Hoopa Indians, who are formally organized as a Tribe (and recognized by the federal government as such) under a constitution adopted in 1950, and who have a formal tribal roll that also was adopted in 1950 (Pet. App. 124-

131). Since 1935, the Secretary of the Interior has made per capita distributions of revenues from the sale of timber on unallotted lands on the Square only to persons listed on the official tribal roll of the Hoopa Valley Tribe. The approximately 3,800 individual plaintiffs in this suit (Pet. App. 2) are not members of the Hoopa Tribe, but are persons of Indian ancestry who claim some connection with that portion of the Reservation along the lower reaches of the Klamath River known as the Addition, although approximately 80% of the plaintiffs do not reside there (83-1555 Pet. 12 n.8). They contend in this action that the Secretary could not lawfully confine per capita distributions of timber revenues from unallotted lands on the Square to members of the Hoopa Valley Tribe, which resides on the Square, and that the Secretary is required instead to include Indians of all portions of the Reservation in such distributions. They seek in this suit to recover money damages from the United States for their allegedly unlawful exclusion from past per capita distributions.

In an opinion issued in 1973 (Pet. App. 40-151), the Court of Claims agreed with the plaintiffs, holding that the Square and Addition must be treated as one integrated Reservation intended "for an undetermined number of tribes" (Pet. App. 47) and that the Secretary therefore erred in confining the per capita distributions of timber revenues on the Square to members of the Hoopa Valley Tribe. The Court of Claims did not decide in its 1973 opinion which persons in addition to the members of the Hoopa Valley Tribe were entitled to share in such distributions, leaving that matter to be resolved in further proceedings before the trial judge (Pet. App. 41, 151). The United States and the Hoopa Valley Tribe petitioned for a writ of certiorari from the holding that the Secretary could not distribute timber revenues from the Square only to the members of the Tribe that resided there (and from the resulting determination that the United States was liable for money damages to at least some of the plaintiffs), but this Court denied the petitions, with two Justices dissenting. 416 U.S. 961 (1974).

b. In a further opinion in the case in 1981, the Court of Claims observed that in 1973 it had "held \* \* \* that all Indians of [the] Reservation were entitled to share in all of its revenues that were distributed to individual Indians (including the timber revenues from the Square), and that the plaintiffs who were Indians of the Reservation [even though not members of the Hoopa Valley Tribe] were entitled to recover the monies the government had withheld from them" (Pet. App. 26-27). The 1981 opinion reaffirmed that 1973 holding, concluding that "individual Indians [of the Reservation were] entitled to recover" (*id.* at 30) because they had been "arbitrarily excluded [by the Interior Department] from *per capita* distributions" (*id.* at 31) to which they were entitled "on an individual (rather than a tribal) basis" (*id.* at 32).<sup>2</sup>

One question that remained to be resolved when the Court of Claims issued its 1981 opinion, however, was how to determine which of the numerous individual plaintiffs who claimed to be Indians of the Reservation in fact should be regarded as such for purposes of the right to participate in Reservation timber revenues and therefore to recover damages from the United States.<sup>3</sup> The Court of

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<sup>2</sup> The plaintiffs did not purport to sue as members of a Tribe. The Coast Indian Community of Yurok Indians of the Resighini Rancheria is organized under the Indian Reorganization Act of 1934, 25 U.S.C. 461 *et seq.* See 48 Fed. Reg. 56862, 56863 (1983). The Yurok Tribe of the Hoopa Valley Reservation is a federally recognized tribe, *id.* at 56865, but is not formally organized (Pet. App. 28-29). In 1979, the government had moved to substitute the Yurok Tribe for the thousands of individual plaintiffs on the theory that only a tribal entity could, under 25 U.S.C. 407, have any possible claim to timber revenues. In its 1981 opinion, the Court of Claims denied that motion, noting that there was "no [such] existing organizational or functional tribal entity" (Pet. App. 29).

<sup>3</sup> At the time of the 1981 opinion, judgment already had been entered in favor of approximately 148 plaintiffs who were determined to be qualified under the Court of Claims' 1973 decision. These judgments were the results of adjudications by the Court of Claims or of the government's failure to contest the claims of the particular claimants. See Pet. App. 9 n.9, 27-28.

Claims accordingly remanded the case to the trial judge once again with instructions to issue a recommended decision "determining, under standards he will formulate in accordance with [the 1981] opinion, which of the plaintiffs whose cases are ready for disposition are Indians of the Reservation" (Pet. App. 39). The Court of Claims directed the trial judge to consider the standards governing membership in the Hoopa Valley Tribe as "an appropriate guideline and basis" to formulate standards for the eligibility of the plaintiffs, even though the plaintiffs are not members of that Tribe (Pet. App. 38).

The United States and the Hoopa Valley Tribe again filed petitions for a writ of certiorari to review the Court of Claims' holding that the plaintiffs who claimed some nexus only to the Addition had a right to share in per capita distributions of timber revenues from the Square, but this Court again denied certiorari. 455 U.S. 1034 (1982).

2. a. On March 31, 1982, the trial judge issued his recommended decision in response to the remand. The trial judge identified five categories of plaintiffs who were entitled to share in per capita distributions of timber revenues and thus to recover damages from the United States. These categories were patterned after parallel membership standards for the Hoopa Valley Tribe (Pet. App. 10-11).<sup>4</sup> Some 2,300 plaintiffs were found to fall within

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<sup>4</sup> These categories are (Pet. App. 11-12 n.13) :

- A. Allottees of the Reservation and their descendants living anywhere on the Reservation on October 1, 1949;
- B. Residents of the Reservation (and their descendants) living on October 1, 1949, who have received Reservation benefits and services, and hold an assignment or can prove entitlement to an allotment;
- C. Persons living on June 2, 1953 with at least  $\frac{1}{4}$  Reservation blood (defined to include a number of tribes connected with the Reservation) who had lived on the Reservation for 15 years prior to June 2, 1953 and have ancestors born on the Reservation;

these categories (Pet. App. 213, 235-236, 248A, 251), and summary judgments were entered for them and against the United States in "amounts to be ascertained in further proceedings" (83-1638 Pet. App. B96). The motions for summary judgment on behalf of the plaintiffs other than these 2,300 were denied "without prejudice to renewal within three months after this order becomes final," if the particular plaintiff demonstrates that he does qualify under one of the standards adopted by the court or that "denial of qualification of the plaintiff would on the special facts of the case be manifestly unjust" (*id.* at B100).

Pursuant to Rule 54(b)(3) of the former Court of Claims, all parties filed requests with that court to review the recommended decision. All such requests for review were pending in the Court of Claims on October 1, 1982, the date on which the Court of Claims was abolished and the new Claims Court and United States Court of Appeals for the Federal Circuit replaced it.<sup>6</sup> On October 4, 1982, the Federal Circuit issued an order directing the Claims Court to transmit to it a "judgment" corresponding to each trial judge's recommended decision still pending. Such a "judgment" accordingly was entered by the Claims Court in this case on October 6, 1982. This case was then transferred to the Federal Circuit. Despite a substantial

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- D. Persons possessing at least  $\frac{1}{4}$  Indian blood and who were born after October 1, 1949 and before August 9, 1963 [the date the present action was commenced] to a parent who did qualify or would have qualified as an Indian of the Reservation under A, B or C, *supra*; and
- E. Persons born on or after August 9, 1963, of at least  $\frac{1}{4}$  Indian blood derived exclusively from a parent or parents who qualified under A, B or C, *supra*.

<sup>6</sup> See Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, §§ 101, 105(a), 402, 96 Stat. 25, 26-28, 57.

question whether it had jurisdiction over the appeal,<sup>6</sup> that court nevertheless proceeded, after additional briefing, to

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<sup>6</sup> This "transfer" process was required by Section 403(a) of the Federal Courts Improvement Act, Pub. L. No. 97,164, 96 Stat. 57-58. Section 403(a) states that if, on October 1, 1982, a request for review was pending in the former Court of Claims, then the relevant "case \* \* \* shall be transferred to the United States Court of Appeals for the Federal Circuit." The Section 403(a) transfer process was automatic and was not triggered by any act of the litigants, such as the filing of a notice of appeal or a petition. Section 403(a) provides no guidance with respect to the appropriate disposition of a case "transferred" to the Federal Circuit. However, in *Aleut Tribe v. United States*, 702 F.2d 1015 (1983), the Federal Circuit held that Section 403(a) does not confer jurisdiction on the Federal Circuit if the Claims Court's decision was not otherwise appealable to that court pursuant to 28 U.S.C. 1295(a)(3) or 1292(d)(2). The first of these provisions confers jurisdiction on the Federal Circuit over appeals from "final decisions" of the Claims Court, and the second provides for interlocutory appeal of Claims Court orders by a process of certification parallel to that in 28 U.S.C. 1292(b). See also *Ellis v. United States*, 711 F.2d 1571, 1574-1575 (Fed. Cir. 1983). In this case, as in *Aleut Tribe*, the trial judge, in entering a "judgment" on October 6, 1982, did not make the necessary certification for interlocutory appeal pursuant to 28 U.S.C. 1292(d)(2).

The Federal Circuit also does not appear to have had jurisdiction under 28 U.S.C. 1292(a)(3). Insofar as the trial judge's recommended decision (as converted into a Claims Court judgment on October 6, 1982) denied the motion for summary judgment on behalf of individual plaintiffs, including the petitioners in No. 83-1638, it plainly was not an appealable "final decision." *Switzerland Ass'n v. Horne's Market*, 385 U.S. 23 (1966). Moreover, it does not appear that the trial judge's recommended decision (as converted into a Claims Court judgment) that granted summary judgment in favor of the other plaintiffs on the question of the liability of the United States was a "final decision" appealable to the Federal Circuit as of right by the United States or the Hoopa Valley Tribe, since the amount these plaintiffs are entitled to recover remains to be decided in further proceedings. *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737, 744 (1976); cf. *Catlin v. United States*, 324 U.S. 229, 233 (1945); but cf. *Airborne Data, Inc. v. United States*, 702 F.2d 1350, 1361 & n.23 (Fed. Cir. 1983). But even if a liability determination is appealable as of right, an appeal would not seem to have been available in this case because the Claims Court did not enter a final decision with respect to all parties; as noted above, the

consider the pending requests for review of the Claims Court's "judgment."

b. On March 7, 1983, during oral argument before the court of appeals, counsel for the Tribe announced that it would move to dismiss this case for lack of subject matter jurisdiction in the Claims Court. The basis for the Tribe's motion, formally filed on March 14, 1983, was that under *United States v. Mitchell (Mitchell I)*, 445 U.S. 535 (1980), the plaintiffs did not have a cause of action under the Tucker Act to recover money damages against the United States based on the Secretary's decision not to include them in the per capita distribution of timber revenues he made to members of the Hoopa Valley Tribe. In April 1983, the United States also moved to dismiss for lack of subject matter jurisdiction on virtually identical grounds.

In opposing dismissal, the plaintiffs contended that their substantive right to participate in per capita distributions of timber revenues—and therefore their right to recover a money judgment from the United States—was based on 25 U.S.C. 407. That Section provides that the Secretary of the Interior shall manage timber on unallotted lands on an Indian Reservation in accordance with principles of sustained yield and that the proceeds from the sale of such timber "shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as [the Secretary] may direct." Previ-

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denial of summary judgment to the petitioners in No. 83-1638 was not a final judgment. The Claims Court could direct entry of a final judgment as to fewer than all the parties "only upon an express determination that there [was] no just reason for delay and upon an express direction for the entry of judgment." Fed. R. Civ. P. 54(b). See *Aleut Tribe v. United States*, 702 F.2d at 1020; *Ellis v. United States*, 711 F.2d at 1575 & n.4. No such express determination pursuant to Fed. R. Civ. P. 54(b) was made here.

Although the jurisdictional problem was called to the Federal Circuit's attention, that court did not discuss it.

ously, both the plaintiffs and the Court of Claims had appeared to base the plaintiffs' substantive right to monetary relief on the Act of April 8, 1864 and the Executive Orders issued thereunder, which provided for the establishment of the Reservation (see page 3, *supra*) and which, the Court of Claims had held, required the Reservation to be treated as an integrated unit intended for the equal benefit of all Indians of the Reservation.

On October 6, 1983, the court of appeals affirmed the Claims Court's judgment and remanded for further proceedings in accordance with its opinion. Relying upon this Court's intervening decision in *United States v. Mitchell (Mitchell II)*, No. 81-1748 (June 27, 1983), in which the Court held that Indians may sue the United States for damages for breach of its fiduciary duties in managing timber resources, the court held that the Claims Court had subject matter jurisdiction in this case under the Tucker Act (Pet. App. 3-9). In the court of appeals' view, it must follow from *Mitchell II* that the United States "was under fiduciary obligations with respect to the comparable Indian forest lands involved here," and that the United States therefore is liable under 25 U.S.C. 407 "for breach of fiduciary obligation in failing to distribute the [timber] sale proceeds (and other income) to persons entitled to share in those proceeds—such as those plaintiffs who turn out to be qualified in this case" (Pet. App. 4).

The court of appeals also rejected the contention that the plaintiffs do not fall within the group of persons specified in 25 U.S.C. 407 as intended beneficiaries of the timber proceeds—i.e., the "members of the tribe or tribes concerned"—because they were not members of the Hoopa Valley Tribe or some other organized or recognized Tribe but were instead suing as individuals (Pet. App. 6-8). "[I]t is clear to us," the court reasoned, "that Congress, when it used the term 'tribe' in this instance, meant only the general Indian groups communally concerned with the proceeds—not an officially organized or recognized Indian tribe—and that the qualified plaintiffs fall into the group

intended by Congress" (Pet. App. 7). The court observed in this regard that the term "tribe" has "no fixed, precise or definite meaning," and noted that the definition of the term in the Indian Reorganization Act includes "Indians residing on one reservation" (25 U.S.C. 479). "With respect to the Hoopa Valley Reservation," the court concluded, "that is its meaning in 25 U.S.C. § 407." Pet. App. 7-8.<sup>7</sup>

On the merits, the court of appeals rejected all parties' objections and affirmed the trial judge's decision establishing standards under which plaintiffs may qualify for entitlement to compensation for their exclusion from prior per capita distributions. Pet. App. 9-20. The court stressed that all it was deciding was the nature of the standards to be applied in determining which plaintiffs should share in monies from the Hoopa Valley Reservation that were unlawfully withheld from them. Thus, the court explained: "We are *not* deciding standards for

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<sup>7</sup> The court of appeals also relied upon another statute, 31 U.S.C. 1321(a) (20), in finding that the plaintiffs had a substantive right to sue to recover part of the timber-sale revenues that had been deposited in a Treasury trust fund account and then, in the court's view, "improperly distributed to others or illegally withheld from those claimants" (Pet. App. 8-9). Section 1321(a) (20) provides that "Indian moneys, proceeds of labor, agencies, schools, and so forth" are "classified as trust funds" in the Treasury. The court concluded that the "proper beneficiaries" of such trust funds "can sue under the Tucker Act if those funds illegally leave the Treasury" (Pet. App. 8).

Section 1320 is a 1982 reenactment and codification of Section 20(a)(20) of the former Permanent Appropriation Repeal Act of 1934, ch. 756, 48 Stat. 1233, as amended, 31 U.S.C. (1976 ed.) 725a(a)(20). Interior Department regulations designate these funds as Indian Money, Proceeds of Labor (IMPL) accounts. 25 C.F.R. Pt. 113. In 1982, Congress directed the Secretary of the Interior to cease depositing funds in IMPL accounts and to establish procedures for the determination of ownership of IMPL funds and for their distribution to tribes or to individual Indians. Supplemental Appropriations Act, 1982, Pub. L. No. 97-257, Tit. I, 96 Stat. 818, 838-839. See 48 Fed. Reg. 48806 (1983).

membership in any tribe, band or Indian group, nor are we ruling that Hoopa membership standards should or must control membership in a Yurok tribe or any other entity that may be organized on the Reservation" (Pet. App. 20 (emphasis in original)). The court further explained that its decision would control "only for the years until final judgment, and for the years to come while the situation in the Reservation remains the same subject of course to births and deaths" (*ibid.*). With this limitation, the court remanded to the Claims Court for further proceedings consistent with its opinion (*id.* at 21).

3. On December 9, 1983, and January 26, 1984, respectively, the attorneys who originally represented petitioners in No. 83-1638 and the other plaintiffs (83-1638 Pet. 15) sent letters to all plaintiffs (83-1638 Pet. App. F, G) explaining that if counsel were to file a petition for a writ of certiorari on behalf of those plaintiffs who were found not to be qualified to share in timber revenues and who therefore were denied summary judgment, such a petition might create a "risk" for (*id.* at F6) or be "harmful to" (*id.* at G4) the majority of their clients in whose favor summary judgment had been granted. Therefore, both counsel informed the recipients they would not seek further review in this Court, but advised the plaintiffs who wished to seek such review to retain new counsel (*id.* at F8, G5). The petition in No. 83-1638 was filed in response to this letter, and it challenges the exclusion of the plaintiffs whose motions for summary judgment were denied.

#### ARGUMENT

We continue to believe that the Court of Claims—and now the Federal Circuit—have clearly erred and done an injustice to the Hoopa Valley Tribe in holding that the Secretary of the Interior was barred from making per capita distributions of revenue from timber sales on the Square only to members of the Hoopa Valley Tribe. That Tribe traditionally has occupied the Square, while the

Yurok and other Indians whose descendants are plaintiffs here traditionally occupied the Addition to the Reservation and had an opportunity to accept (and in many cases did accept) allotments there. The Secretary therefore reasonably could conclude that only the members of the Hoopa Valley Tribe are "members of the tribe or tribes concerned" with the harvesting of timber on the Square, who alone were entitled under 25 U.S.C. 407 to have the timber revenues applied to their benefit.\* This Court, however, has twice denied petitions for a writ of certiorari filed by the United States and the Hoopa Valley Tribe seeking review of the Court of Claims' decisions holding that the Secretary's actions were unlawful. 416 U.S. 961 (1974); 455 U.S. 1034 (1982). We therefore have eschewed asking once again that the Court review that question, especially since this case is still in an interlocutory posture.

If we accordingly accept for present purposes the underlying premise of the Court of Claims' and Federal Circuit's rulings that at least some Indians of the Addition were entitled to participate in per capita distributions of timber revenues, the decision below determining which additional persons were entitled to do so does not warrant review at this time. As an initial matter, there is a substantial question whether this Court even has jurisdiction over the case under 28 U.S.C. 1254(1), because it does not appear that the case was properly "in" the court of appeals at this interlocutory stage. See pages 7-8 & note 6, *supra*. But even if the Court has jurisdiction, review is unwarranted. Although we, like the Tribe, are troubled by the potential ramifications of the expansive language the court below used in its interpretation of 25 U.S.C. 407, the precedential effect of the decision may prove to be confined to the somewhat unusual circumstances of the Hoopa Valley Reservation.

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\* Our position on this point is fully set out in our Petition for a Writ of Certiorari and Reply Brief in *United States v. Jessie Short, et al.*, No. 81-1873. We will not repeat that discussion here.

And even that effect is uncertain, because the court of appeals has not yet finally determined how many plaintiffs ultimately may qualify to share in the revenues or the amount of the United States' liability to them. Similarly, the court of appeals has not finally rejected the claims of the individual plaintiffs who are petitioners in No. 83-1638, and review of their claims at this time therefore would also be premature.

1. a. We shall first address the contentions of the Tribe in No. 83-1555. We must disagree at the outset with the Tribe (Pet. 18-21) that the decision below conflicts with *United States v. Mitchell (Mitchell II)*, No. 81-1748 (June 27, 1983). There, this Court held that an amalgam of several statutes, including 25 U.S.C. 407, gave rise to a fiduciary responsibility on the part of the federal government to manage timber resources and sales for the benefit of the affected Indians, and that a breach of this duty could be remedied by a suit against the United States for money damages under the Tucker Act (slip op. 13, 16-17, 22). The court below concluded that, since the United States has a fiduciary responsibility under 25 U.S.C. 407 and *Mitchell II* with respect to timber management and the use of revenues derived therefrom, if the Secretary decides to distribute those revenues to individuals, he cannot arbitrarily exclude from that distribution persons who Congress intended to be beneficiaries of the trust relationship. See Pet. App. 8. We do not believe that this conclusion, as an abstract matter, is inconsistent with the Court's decision in *Mitchell II*—so long as it preserves discretion for the Secretary to devote timber revenues to certain tribal purposes (e.g. a school or roads) and, if he makes distributions to individuals, to draw reasonable distinctions among them on the basis of such legitimate factors as individual need or the strength of the recipient's ties to the Reservation. Our disagreement instead is with the conclusion by the courts below that the Secretary acted arbitrarily in excluding the particular plaintiffs involved here from past per capita dis-

tributions. *Mitchell II* does not address this distinct question of *who* must be considered a beneficiary of the trust relationship the Court in *Mitchell II* found to be established by 25 U.S.C. 407.

b. Of course, putting *Mitchell II* to one side, it does not follow that the court of appeals was correct in holding that the Secretary unlawfully excluded the individual plaintiffs in this suit from past per capita distributions and therefore violated a fiduciary responsibility to them under 25 U.S.C. 407. Section 407 authorizes the Secretary to apply proceeds from the sale of timber on unallotted reservation lands "for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as he shall direct." Here, the Secretary reasonably could conclude that since the Hoopa Valley Tribe occupies the Square, only persons who are members of that Tribe are "members of the tribe \* \* \* concerned" with the timber on the Square and that per capita distributions accordingly should be made only to them. The plaintiffs are not members of the Hoopa Valley Tribe, and indeed they have not sought to recover in this suit as members of *any* tribe. They instead have sought to recover as individual Indians of the Reservation, and they have done so even though the great majority do not even reside on the Reservation. The court of appeals nevertheless concluded that the individual plaintiffs could be regarded as "members" of a "tribe concerned" for purposes of Section 407 (Pet. App. 7). The court reached this strained result by construing the term "tribe" in Section 407 to mean "the general Indian groups communally concerned with the proceeds [of timber sales]—not an officially organized or recognized tribe" (*ibid.*).

We, like the Tribe (Pet. 6-7, 9-10), are disturbed by this expansive language used by the court of appeals in discussing 25 U.S.C. 407, because it can be read to suggest that a court has the power to decide for itself that individual unaffiliated Indians who reside on a Reservation set aside for a designated Tribe but who are not

members of that Tribe are nevertheless "communally concerned" with the Reservation's resources and are entitled to share in the revenues generated by those resources, notwithstanding the Secretary's considered judgment and consistent practice that the resources were intended and should be utilized for the benefit of the enrolled members of the Tribe. Such a construction would constitute an unprecedented judicial intrusion into matters entrusted to the political branches and to the Indian Tribes. But the opinion is capable of a narrower reading.

The court of appeals stated that its construction of the term "tribe" in Section 407 as embracing a group of individual Indians was the "implicit holding of the Court of Claims when it decided in 1981 \* \* \* that the non-organized Yurok Tribe should not be substituted for the present plaintiffs" (Pet. App. 7); and the court reasoned that this construction in any event must be proper because the Court of Claims had already twice held that qualified individual plaintiffs were entitled to share in timber proceeds (*ibid.*). Thus, the court below candidly acknowledged that it was driven to its strained reading of 25 U.S.C. 407 by the Court of Claims' prior reading of the 1864 Act and the Executive Orders as creating a right in the plaintiffs to share in the resources of the entire Reservation, including the Square. It is for this reason—however erroneous the Court of Claims' prior decisions might have been—that the court of appeals' construction of Section 407 might be limited to the circumstances of the Hoopa Valley Reservation.

The court of appeals in effect concluded (although it did not explain its holding in precisely this way) that there were two groups of Indians "concerned" with timber operations on the Reservation within the meaning of 25 U.S.C. 407—the Hoopa Valley Tribe on the Square and the Indians affiliated with the Addition—and that the latter group had been wrongfully excluded in its entirety from participating in the benefits generated by resources on the Square. The court then concluded that although

the latter group of Indians having a nexus to the Addition was not formally organized or recognized, there were sufficient affiliations among its members—in their own nexus (or that of their ancestors) to the Reservation and to tribes or bands who formerly lived there—that they could be treated as a “tribe” for purposes of Section 407.<sup>9</sup> And because that group had not organized itself and defined its own membership (and indeed has steadfastly resisted doing so)—and because the Secretary likewise had not exercised his authority under 25 U.S.C. 163 to establish a membership roll for this group or “tribe” of Indians of the Addition—the Court of Claims and now the Federal Circuit evidently thought they should fill the void they perceived by defining their own standards of membership for this group. If the proceedings below are understood in this manner, the opinion of the court of appeals would not apply to other Reservations where either the Tribe or the Secretary *has* established a membership roll that in turn entitles the enrollees to participate in the distribution of timber revenues under 25 U.S.C. 407. In such a case, a court could not properly second-guess the established membership standards. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

We do not suggest, of course, that the court below and the Court of Claims had the authority to second-guess the Secretary’s recognition of the Hoopa Valley Tribe as the only “tribe concerned” with matters on the Square, to designate another group as equally concerned, and to

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<sup>9</sup> In other circumstances, such an interpretation of 25 U.S.C. 407 might be acceptable. For example, if there was a reservation set aside for and occupied entirely by Indians who had not been formally organized into a tribe, we believe that the Secretary would be authorized by Section 407 to treat those Indians as a tribe for purposes of applying timber revenues for their benefits, in order to implement the congressional intent that some group of Indians on the reservation benefit from timber harvesting. The difference here is that the court below took upon itself (albeit for limited purposes) the task traditionally assigned to the political branches of recognizing a tribe.

adopt standards for membership in that group. Indeed, the inappropriateness of the task for judicial resolution is made manifest in this case by the difficulties and apparent arbitrariness of the line-drawing by the trial judge in identifying categories of qualifying plaintiffs, the assertions by the petitioners in No. 83-1638 of a conflict of interest on the part of lawyers representing the numerous plaintiffs seeking to qualify, and by the steadfast refusal of the plaintiffs (most of whom do not even reside on the Reservation) to organize themselves as a tribe. We merely suggest (and hope) that the judicial intrusion into matters entrusted to the political branches that has occurred in this case might prove to be confined to this case. In fact there are indications that the court of appeals intended its opinion to be limited. See Pet. App. 8 (discussing its interpretation of the term "tribe" as meaning Indians residing on one reservation: "With respect to the Hoopa Valley Reservation, that is its meaning in 25 U.S.C. § 407."); see also *id.* at 20. But if the court's construction of 25 U.S.C. 407 does generate problems on other Reservations, as the Tribe predicts (Pet. 6-11)—or if the adverse consequences seem especially adverse even on the Hoopa Valley Reservation alone—we and the Tribe retain the option of petitioning for a writ of certiorari after the Claims Court has entered a final judgment in the case and the Federal Circuit has reviewed that judgment.

c. The Tribe finally contends (Pet. 11-18) that the court of appeals' extension of 25 U.S.C. 407 to include as beneficiaries individual Indians who are not organized or recognized as a Tribe raises constitutional questions because it creates a suspect classification based on race rather than the individual's political affiliation as a member of a tribe. This problem, they argue, stems from the fact that three of the categories of qualifying plaintiffs require  $\frac{1}{4}$  Indian blood and that other plaintiffs qualify on the basis of being descendants of allottees or assignees of land on the Reservation, who presumably also were

Indians. See note 4, *supra*. This objection, however, was not addressed by the courts below, and therefore should not be considered by this Court at the present time. The Tribe still has the opportunity to present this argument to the courts below in further proceedings, and review by this Court will be available upon entry of a final judgment.

In any event, although we obviously have not had an opportunity to analyze the potential application of this argument to each of the more than 3,000 individual plaintiffs, we do not at this stage perceive a substantial constitutional problem. The plaintiffs in this case who have been found qualified have more in common than simply a particular quantum of Indian blood, and the classification therefore is not simply racial, as the Tribe suggests. All of the plaintiffs have a nexus to the Reservation or to the tribes or bands for which the Reservation was set aside. The first category of qualifying plaintiffs, for example, is comprised of allottees of Reservation land living in 1949 and their lineal descendants, and the second is comprised of residents of the Reservation living in 1949 who received Reservation benefits and services and hold an assignment of land or are eligible for an allotment, and their lineal descendants. Assuming (contrary to our submission) that these plaintiffs' nexus to the Addition rather than the Square entitles them to share in timber revenues from the Square, that nexus surely is sufficiently strong that Congress, through 25 U.S.C. 407, rationally may include them in a distribution of revenues derived from the Reservation.

The third category of plaintiffs is comprised of persons living in 1953 who have  $\frac{1}{4}$  "Reservation blood" (defined to mean that they are descendants of members of the tribes for which the Reservation originally was set aside (83-1638 Pet. App. B98-B99)) and who have forebears born on the Reservation and were resident there for 15 years before 1953. These persons, too, have a direct nexus to the Reservation. Moreover, because this category effec-

tively establishes eligibility on the basis of a person's affiliation (through descent) with one of the original tribes on the Reservation, the decision below applies the statute enacted by Congress in a way that clearly is reasonably related to what the Tribe concedes (Pet. 12-14) to be Congress's power to deal with Indian tribes. Thus, even assuming that Congress is somehow barred from conferring on individual Indians, as such, the benefits of property that was set aside for Indians—a proposition that we strongly dispute (cf. *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73 (1977))—the arrangement here is valid.

The last two categories of eligible plaintiffs are comprised of persons of  $\frac{1}{4}$  Indian blood born after 1949 to a parent or parents who were Indians of the Reservation under any of the first three categories. Since, as we have shown, the plaintiffs in the first three categories have a sufficient nexus to the Reservation that Congress rationally may include them among the beneficiaries of Reservation resources, it surely cannot be impermissible to include their children as well. The Tribe apparently complains of the requirement that these children have at least  $\frac{1}{4}$  Indian blood in order to qualify. But that requirement serves to limit the number of qualified plaintiffs, and thus to work to the Tribe's benefit by limiting the diversion of timber revenues from its own members. We therefore question whether the Tribe should be heard to complain of that feature here, even assuming that the Tribe has an interest to assert in a possible equal protection problem in distinguishing among the plaintiffs.

In any event, such limitations by quantum of Indian blood are common. Indeed the one here was patterned after the Hoopa Valley Tribe's own comparable membership requirement (Pet. App. 11 n.12). In addition, the Indian Reorganization Act's definition of the term "Indian" includes "persons of one-half or more Indian blood," as well as persons of Indian descent who are members of a recognized tribe and the descendants of such members. 25 U.S.C. 479. It is too late in the day to suggest that

classifications that are so pervasive in the realm of Indian law and tradition raise a serious constitutional question—at least where, as here, the individuals involved have other connections to the Reservation or tribes who resided there and the classification is used to identify those individuals who will share in a benefit that the Tribe itself presumably would concede Congress legitimately conferred on some group of Indians, to the exclusion of non-Indians (cf. *Morton v. Mancari*, 417 U.S. 535 (1974); *Delaware Tribal Business Committee v. Weeks*, *supra*), rather than to impose a liability on the individuals (cf. *United States v. Antelope*, 430 U.S. 641, 646 & n.7 (1977)).

2. The submission by the petitioners in No. 83-1638 that the courts below erred in not granting summary judgment to other plaintiffs likewise does not warrant review at this time.

a. As an initial matter, the identity of the persons on whose behalf the petition has been filed is unclear. The petition purports to be filed on behalf of (a) Christopher Eddy; (b) the 1,127 individual plaintiffs whose motions for summary judgment were denied by the trial judge; (c) “[t]hose persons, not named in the petition, who would otherwise qualify to receive the funds in issue,” born between the filing of this case and final judgment; and (d) the “heirs, successors and assigns” of the foregoing persons. See 83-1638 Pet. iv-v. Throughout this case, however, all of the plaintiffs have sued in their own right as named parties. This case is not a class action. Moreover, in a 1976 order the Court of Claims allowed a final group of named plaintiffs to intervene in their own right and announced that, “to the extent this is a class action,” the class is closed (83-1638 Pet. App. A1-A2, B2; *Short v. United States*, 209 Ct. Cl. 777 (1976)). As a result, the last two categories on whose behalf the petition purports to be filed are not even parties to the case.

The 1,127 individual plaintiffs who are referred to in the petition and whose motions for summary judgment

were denied are parties to the case, but it is not clear which of them (if any), in addition to Eddy, actually desires to have his individual claim reviewed by the Court at this time or has personally authorized counsel to file a certiorari petition on his behalf. Since this is not a class action, Eddy cannot seek review as their class representative. If in fact less than all of these 1,127 plaintiffs properly can be regarded as petitioners herein, we do not know which ones should be so regarded or the facts of their individual claims to be Indians of the Reservation. Indeed, the petition does not even discuss the circumstances or claim of Christopher Eddy, the only plaintiff identified by name in the petition. In these circumstances, we do not see how the Court could give meaningful consideration to petitioners' claim that the lower courts erred in not including some or all of these 1,127 plaintiffs among those whom the courts below so far have found to be qualified at this interlocutory stage of the proceedings.

b. Even putting to one side our lack of information regarding the identity and circumstances of the individual petitioners, their petition should be denied. Assuming for present purposes that the courts below have correctly concluded that some group of individuals in addition to members of the Hoopa Valley Tribe are entitled to share in timber revenues from the Square, the courts below cannot be faulted for seeking to contain the resulting incursion upon what previously had been regarded as the legitimate revenue base of the Hoopa Valley Tribe by seeking to place reasonable limitations on the number of additional persons who would qualify.<sup>10</sup> The particular way in which the court of appeals sought to draw a line between those who qualify and those who do not—by patterning the standards after the membership standards of the Hoopa Valley Tribe—does not warrant review.

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<sup>10</sup> We contended below that the trial judge had qualified too many of the plaintiffs, but the court of appeals rejected that contention. Pet. App. 15-17.

Moreover, the 1,127 plaintiffs have not been conclusively determined not to be eligible to participate. Although their motions for summary judgment in their favor were denied, a final judgment has not been entered against them. Even under the decision they attack, petitioners still will have an opportunity before the Claims Court on remand to show that they in fact fall within one of the five categories of plaintiffs the Claims Court found to be qualified or that they should be found qualified because their exclusion would be "manifest[ly] unjust[]" (83-1638 Pet. App. B99-B100; Pet. App. 9-10, 14, 21, 23). Individual plaintiffs should be required to exhaust this possible avenue of relief before seeking review in this Court. In the course of doing so, they will be able to create a record of their own backgrounds and the circumstances of their claims of entitlement that in turn can furnish a basis for review by the court of appeals and this Court.<sup>11</sup>

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<sup>11</sup> Like the Tribe, petitioners in No. 83-1638 object (Pet. 21-31) to the qualifying standards adopted by the courts below on the ground that they establish impermissible or suspect racial classifications. But although the Tribe contends that this defect required that *none* of the plaintiffs should be found qualified, the petitioners in No. 83-1638 contend that this defect requires that *all* the plaintiffs be found qualified. These extreme and diametrically opposed positions—which would require Congress, the courts, and the Secretary to take an all-or-nothing approach—serve only to reinforce our submission above (see pages 19-21, *supra*) that the federal government, in carrying out its constitutionally based guardianship responsibility to the Indian people, has not been placed in a self-defeating constitutional straightjacket derived from legal principles on questions of race in other settings. See, e.g., *Morton v. Mancari*, 417 U.S. at 551-555; *United States v. Kagama*, 118 U.S. 375, 383-384 (1886). As we have explained above, the qualification based on a quantum of Indian blood is common in Indian law and tradition, and its adoption by the court of appeals to define the "tribe" it held to be concerned with timber revenues on the Reservation within the meaning of 25 U.S.C. 407 does not warrant review. Indeed, petitioners concede (83-1638 Pet. 24, 27-28) that this is an acceptable basis on which to define tribal membership.

c. Finally, petitioners in No. 83-1638 contend (Pet. 31-39) that the Court should grant review because the lawyers who represented them in the courts below had a conflict of interest resulting from their simultaneous representation of plaintiffs who ultimately were found to be qualified. This claim was not raised or considered by the courts below, and there accordingly is no record or finding below regarding: the existence, timing, or effect of the alleged conflict; whether it was waived; and whether it should in any event affect the validity of the decision below to the extent it is favorable to the United States or the Tribe.<sup>12</sup> It may be that petitioners cannot be entirely faulted for the failure of this issue to surface at an earlier date.<sup>13</sup> But a denial of review here will not foreclose its consideration, because petitioners, now represented by new counsel, presumably remain free to raise

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<sup>12</sup> Even when inadequate representation is later alleged, "[a] party with privately retained counsel does not have any right to a new trial in a civil suit because of inadequate counsel, but has as its remedy a suit against the attorney" (*Watson v. Moss*, 619 F.2d 775, 776 (8th Cir. 1980)), or for a remission of fees charged (cf. *Littell v. Morton*, 369 F. Supp. 411, 425-426 (D. Md. 1974), aff'd, 519 F.2d 1339 (4th Cir. 1975)).

<sup>13</sup> As the court below said in another context, this case is an adversary proceeding. Accordingly, it was incumbent on plaintiffs to control the prosecution of their own case; the government could not be required to assist them in such prosecution or conduct it on their behalf. *Short v. United States*, 207 Ct. Cl. 964 (1975). Plaintiff's responsibility included the selection of their own counsel, with all consequences flowing from that choice. Nor is it incumbent on a court to reopen and retry issues because counsel's previous representation was inadequate or improper. Parties to civil litigation are presumptively bound by acts and undertakings of their counsel. Cf. *Nevada v. United States*, No. 81-2245 (June 30, 1983); *Oglala Sioux Tribe v. Homestake Mining Co.*, 722 F.2d 1407, 1413-1414 (8th Cir. 1983); *Pueblo of Santo Domingo v. United States*, 647 F.2d 1087, 1088-1089 (1981), cert. denied, 456 U.S. 1006 (1982); *Navajo Tribe v. United States*, 601 F.2d 536, 540 (1979), cert. denied, 444 U.S. 1072 (1980). Moreover, it seems likely that the plaintiffs have been aware, at least in general terms, of the varying strength of their individual claims.

the conflict-of-interest issue in the course of further proceedings in the courts below.

#### CONCLUSION

The petitions for a writ of certiorari should be denied.  
Respectfully submitted.

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MAY 1984

JUN 7 1984

ALEXANDER L. STEVENS,  
CLERK

IN THE  
**Supreme Court of the United States**

October Term, 1983

HOOPA VALLEY TRIBE OF INDIANS,  
*Petitioners,*

v.

JESSIE SHORT, et al.,  
*Respondents.*

**PETITIONER TRIBE'S REPLY TO BRIEFS  
IN OPPOSITION**

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**I. Respondents Say Nothing That Discounts The Significance of the Question Whether the General Indian Timber Statute, 25 U.S.C. § 407, Allows Federal Courts to Select Those Persons Who Are "Communally Concerned" or Instead Directs Proceeds to Federally-recognized Indian Tribes And Their Members.**

No one denies that the central dispute here concerns 25 U.S.C. § 407, the general Indian tribal timber statute under which the Bureau of Indian Affairs administers every tree, growing acre of unallotted land found on Indian reservations across the United States. The dispute potentially affects 50 million acres which yield approximately \$70 million in income each year. App. 167. Although the statute provides unambiguously that proceeds from the sales of unallotted timber "shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as [the Secretary] may direct," the court below held that the term "tribe" included all plaintiffs determined by the court to be "communally concerned with the proceeds," whether or not such persons are members of any tribe. This interpretation is unprecedented, and contradicts the consistent and longstanding Department of the Interior interpretation that the term "tribe" in this and other similar statutes naming "tribes" as beneficiaries, *see* Petition at 8, n.5, refers only to federally-recognized Indian tribal governments and their enrollees. App. 192, 182.

The Government, responding in opposition to the petition, admits that it, too, is "disturbed by this expansive language used by the court of appeals in discussing 25 U.S.C. 407." U.S. Resp. at 15.<sup>1</sup> The Government acknowledges that the

<sup>1</sup>. The United States submitted a joint response to the petitions in nos. 83-1555 and 83-1638 entitled "Brief For The United States In Opposition." We cite it as "U.S. Resp." Some of the individual plaintiffs in the litigation below, represented by William K. Shearer, filed a brief entitled "Response of Certain Respondents to Petition for a Writ of Certiorari ... and to Motion of Timber Resources Tribes and Other Tribes for Leave to File a Brief as Amicis Curiae ..." We cite this brief as "Pltf's Resp." The other respondents in this proceeding have not filed a brief either opposing or favoring review, although some are petitioners in *Christopher Eddy, et al., v. United States and Hoopa Valley Tribe*, No. 83-1638.

lower court's ruling "would constitute an unprecedented judicial intrusion into matters entrusted to the political branches and to the Indian Tribes," if read to allow a court to ignore "the Secretary's considered judgment and consistent practice that the resources were intended and should be utilized for the benefit of the enrolled members of the Tribe." U.S. Resp. at 16. Nevertheless the Government expresses the hope that "the precedential effect of the decision may prove to be confined to the somewhat unusual circumstances of [this] ... Reservation." U.S. Resp. at 13.

This is merely wishful thinking. The lower court's analysis purports to be based on its reading of the general legislative history of 25 U.S.C. § 407, App. 7 and n.8, and there is no intimation in the court's opinion that its jurisdictional reasoning and construction of the statute would not apply to other tribes. The Government does not suggest any legal basis to give it one construction on the Hoopa Valley Reservation and another elsewhere, and the Federal Circuit would be hard pressed to distinguish its *Short* interpretation of § 407. That the lower court may have felt "driven" to reach this "strained" reading of § 407 merely illustrates that hard cases can make bad law. Therefore, the Government's expressed "hope that the judicial intrusion into matters entrusted to the political branches that has occurred in this case might prove to be confined to this case," U.S. Resp. at 18, should give this Court, the Department of the Interior, and the many tribes with timber resources but little comfort.<sup>2</sup> Neither the Hoopa Valley Tribe nor the score

2. The Government speculates that: "[T]he opinion of the court of appeals would not apply to other Reservations where either the Tribe or the Secretary has established a membership roll that in turn entitles the enrollees to participate in the distribution of timber revenues under 25 U.S.C. 407. In such a case, a court could not properly second-guess the established membership standards. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)." U.S. Resp. at 17. But *Short* is precisely such a case: It is undisputed both that the Hoopa Valley Tribe has established its membership roll, e.g., U.S. Resp. at 3, and that the Secretary exercised his power under 25 U.S.C. § 163 to make this tribal roll final as to the Hoopa Valley Reservation in 1952. App. 128. It is precisely because the lower court has ignored *Martinez* and 25 U.S.C. § 407 that the Tribe seeks certiorari.

of timber resource tribes who have sought leave to file a brief as amici curiae in support of petitioner share the respondents' equanimity about this issue. The potential of the decision below for substantial mischief should not be ignored.

**II. This Case Strains to the Breaking Point the Limits on Access to Federal Courts Set in *Santa Clara Pueblo v. Martinez* and *United States v. Mitchell I and II*. Short Distends the Boundaries of Claims Court Jurisdiction Far Beyond the Narrow Waivers of Sovereign Immunity Previously Approved by This Court.**

Both the Government and the other respondents misconstrue our Tucker Act jurisdiction argument rather than meet it squarely. This is disheartening, because the Government joined us below in moving to dismiss on the same grounds. U.S. Resp. at 9. Of course *United States v. Mitchell (Mitchell II)*, No. 81-1748, \_\_\_\_ U.S. \_\_\_, 103 S. Ct. 2961 (1983) recognizes that Tucker Act jurisdiction exists with respect to *certain* claims based on 25 U.S.C. § 407, and we did not contend otherwise. But as the Government understands very well, *Mitchell II* also held that the statute relied upon as the jurisdictional base for a Tucker Act claim must impose a duty whose breach is complained of. This did not present a problem in *Mitchell II* itself,<sup>3</sup> but it does here.

*Mitchell II* requires that the statute upon which a Tucker Act damages claim is founded "can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the *duties [it] impose[s]*." *Id.* at 2969 (emphasis added). This is a question of substantial importance because if the statute does not give rise to the *duty* said to be breached, then the claim is not "founded upon" an act of Congress and the Tucker Act does not provide a waiver of sovereign immunity.

The question in *Short* is whether 25 U.S.C. § 407 imposes a duty on the Secretary of the Interior to distribute timber

3. Plaintiffs in *Mitchell II* were the actual Indian allottees seeking to recover damages with respect to their timber. There was no dispute concerning whether or not the duties created by 25 U.S.C. § 406 ran to them. 103 S. Ct. at 2964.

income to persons who are not, and do not claim to be, tribal members. The lower court purported to comply with *Mitchell* by reasoning that if, as it had previously held, Indians of the Addition are entitled to share in timber-sale proceeds, then they must be "members of the tribe" within the meaning of § 407. App. 7, 8. But this assumes the very question to be decided.

Law of the case, particularly when based upon an irrelevant statute that cannot support jurisdiction,<sup>4</sup> does not satisfy the mandate of *Mitchell II*. If the contours of the United States' fiduciary responsibility are allowed to be determined by equitable principles or law of the case, rather than by reference to the particular statute upon which a claim is "founded", then the Claims Court's jurisdiction may expand as far as the Claims Court chooses.

Nor does the jurisdictional inquiry come to an end with a finding that the property is "held in trust," as the lower court suggests. App. 5, 8. This Court foreclosed that argument:

In contrast to the bare trust created by the General Allotment Act [construed in *Mitchell I*], the statutes and regulations now before us clearly give the Federal Government full responsibility to manage Indian resources and land for the benefit of the Indians. They therefore establish a fiduciary relationship and *define the contours of the United States' fiduciary responsibilities*.

*Mitchell II*, 103 S. Ct. at 2972 (emphasis added). If the lower court ruling stands, the existence of *any* trust relationship will be sufficient to trigger Tucker Act jurisdiction and the court will be free to go outside the alleged statutory foundation to define the contours of the United States' fiduciary responsibilities. This result is presaged by the lower court's alternative holding that jurisdiction exists under 31 U.S.C. § 1321(a),

4. The Court of Claims had consistently held that the Act of April 8, 1864, 13 Stat. 39, was "the source of all claims" in the suit. App. 55, *see also* App. 42 ("The act of 1864 is the basis of the claims . . ."). This Act empowered the President to issue the Executive Order creating the Hoopa Valley Indian Reservation. But this Court has consistently ruled that establishment of such reservations does not create compensable property rights in Indians. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 103 (1949).

see U.S. Resp. at 11, n.7, a statute which lists 90 different funds only a handful of which belong to Indians.<sup>5</sup>

It is essential to preserve the *Mitchell II* requirement that the statute relied upon create the duty whose breach is asserted, particularly in delicate cases such as *Short*, where inquiry into tribal membership decisions would otherwise be required. As this Court stated in *Martinez* (quoting the district court):

[T]he ... Act should not be construed in a manner which would require or authorize this Court to determine which traditional values will promote cultural survival and should therefore be preserved ... . Such a determination should be made by the people of Santa Clara; not only because they can best decide what values are important, but also because they must live with the decision every day ... .

To abrogate tribal decisions, particularly in the delicate area of membership, for whatever "good" reasons, is to destroy cultural identity under the guise of saving it.

436 U.S. 49, 54. Here, by contrast, the lower court held:

[T]he plaintiffs of the following classes are qualified as Indians of the Hoopa Valley Reservation and are therefore entitled, equally with all others qualified, to share the profits of the unallotted trust lands of the Reservation. Judgment is given for these plaintiffs, against the Government and the intervening defendant-Tribe.

#### 4. (Con't)

Furthermore, regardless of the method by which the reservation was established, this Court squarely held in *Mitchell I*, 445 U.S. 535, 545 (1980) that Indians had no right to harvest timber commercially or retain timber proceeds before enactment of 25 U.S.C. § 407 in 1910. Thus an act passed in 1864 has no bearing on the Secretary's duties as to timber proceeds governed by § 407.

5. Each of these funds is created for a specific statutory purpose, so in some situations an underlying statute directs payment and thus could serve as the foundation for Tucker Act jurisdiction. But it does not follow that a plaintiff is entitled to sue the United States for payment out of these trust funds simply because they are held in a bare statutory trust. See *Mitchell II*, 103 S. Ct. at 2972. In addition to the enormous federal retirement funds listed in § 1321(a), hundreds of millions of dollars of tribal money of all descriptions pass through Treasury Department trust

App. 21. That is far too bold a determination to withstand critical examination.<sup>6</sup>

### **III. Allowing This Unorganized Class of Indian Descendants to Assert Tribal Rights Will Abridge Constitutional Limits and Cause Mischief in the Law.**

On the constitutional issue, respondents once again avoid rather than answer our arguments. Respondents claim, for example, that "Petitioner argues that Indians may be defined only in terms of organized tribes." Pltf's Resp. at 15. We actually argue the converse: tribes may be defined only in terms of politically-organized Indians. No respondent denies that the plaintiffs below who satisfy the criteria for "Indians of the Hoopa Valley Reservation" are almost entirely individuals who live outside the reservation in non-Indian communities not only in California but also, for example, in Anchorage, Little Rock, and Philadelphia. This class of plaintiffs has no leadership or government and is not recognized by the United States as a tribe. *See* Petition at 12, n.8.

The Government suggests that, notwithstanding the command of 25 U.S.C. § 407 that timber revenues benefit Indians who are "members of the tribe or tribes concerned," plaintiffs have a "nexus" to the reservation which establishes a reasonable basis for singling them out for distribution of federal benefits.

#### **5. (Con't)**

accounts, *e.g.*, proceeds from rights-of-way, oil and gas leases, mineral leases, grazing and timber income. Every day tribal governments make decisions about expenditures of those funds. Most of those decisions are subject to approval of the Secretary of the Interior. Under the lower court's bootstrap approach any plaintiff may sue the United States under the theory that he was entitled to the money and that the Government breached a fiduciary responsibility to him by permitting the Tribe to spend it for a tribal project. In effect, plaintiffs will be able to sue the Government on complaints that stem from *tribal* governmental decisions, whether they be membership decisions or merely budget allocations.

6. Besides the remarkable similarity between what this Court forbade in *Martinez* and what lower court did here, *Martinez* is important for its explanation of sovereign immunity. There, relying on Tucker Act cases, the Court refused to infer a waiver of immunity "in the absence ... of

U.S. Resp. 19-20. However, few of the qualifying plaintiffs have an actual "nexus" to the reservation; instead, their connection derives from their ancestors, often 4-6 generations back.<sup>7</sup> Thus, the key qualification in each category is the language "and their descendants." App. 21-22. This is what the Tribe meant in arguing that the classification imposed by the Court of Appeals was racial and *genealogical* in character.

Both respondents also argue that the Court of Appeals' determination is not objectionable because classifications based on blood quantum are commonplace in federal Indian law. U.S. Resp. 19-20, Pltf's Resp. 15-16. But this ignores the difference between a *tribe* making membership determinations based upon Indian ancestry and the same determination being made by the federal courts. The Bill of Rights does not apply to Indian tribes in the conduct of their governmental affairs, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-58 (1978), but most certainly does apply to the federal government.

These constitutional problems are easily avoided, as they should be. *Crowell v. Benson*, 285 U.S. 22, 62 (1932). The statute at issue here does not purport to convey benefits to Indians unless they are "members of the tribe or tribes concerned." 25 U.S.C. § 407. As we emphasized in our Petition, the term "tribe" as used in the Constitution and in federal statutes clearly has political content. It does not exist in a vacuum.<sup>8</sup> As this Court stated in *White Mountain Apache*

#### 6. (Con't)

any unequivocal expression of contrary legislative intent ..." 436 U.S. at 58-59. While that standard may have been relaxed somewhat in *Mitchell II*, see 103 S. Ct. at 2978 (Powell, J., dissenting), the Court has never questioned the holding of *Martinez*.

7. See Exhibits 4, 5, 13 in Appendices to the Tribe's Request for Review of Trial Judge's Opinion Setting Standards, filed in the Court of Claims June 25, 1982 and transmitted to this Court pursuant to Rule 19.1.

8. This fact has repeatedly been stressed by this Court in upholding legislation creating benefits or burdens for Indians, and was explicitly relied upon by the Court in *United States v. Mazurie*, 419 U.S. 544, 556-58 (1975). This Court, in rejecting the challenge to a federal delegation of power to

*Tribe v. Bracker*, 448 U.S. 136, 149 (1980), § 407 was designed to assure that timber profits would "inure to the benefit of the Tribe ... [as] part of the general federal policy of encouraging tribes 'to revitalize their self-government'... ." Thus, the Government's suggestion that the lower court's ruling merely implements the conclusion that "there were two groups of Indians 'concerned' with timber operations on the Reservation", U.S. Resp. at 16, misses the point.<sup>9</sup> "Tribe" was intended by Congress, and is mandated by the Constitution, to refer not to mere "groups of Indians" but rather to a political organization. This difference is substantial, and merits review.

#### **IV. Interlocutory Review on the Merits is Appropriate.**

*Short*, of course, is interlocutory. But the case is in a significantly different posture than it was when the Court previously declined to grant certiorari.<sup>10</sup> As stressed above, the lower court in *Short* has, for the first time, construed and based

##### 8. (Con't)

a "tribe," reasoned that the existence of "independent tribal authority is quite sufficient to protect Congress' decision to vest in tribal councils this portion of its own authority 'to regulate Commerce ... with the Indian tribes.'" 419 U.S. at 557.

9. In cases such as this there are always two "groups," the "in-group" and the others. The difference is that one group is a tribe and the other (a class of plaintiffs) is not. As might be expected, the "out-group" alleges that animus led to their non-enrollment. Similar controversy surrounds every Indian tribe that seeks to draw membership standards. *See generally* Brief of Amici Curiae in No. 83-1555.

10. Earlier denials of certiorari at interlocutory stages do not mean that the matter is final or that a grant of certiorari is now inappropriate. *Washington v. Fishing Vessel Ass'n*, 443 U.S. 658, 672 n.19 (1979); *Chessman v. Teets*, 354 U.S. 156, 164 n.13 (1957). The *Chessman* court, in granting certiorari after six previous denials emphasized that its "overriding responsibility ... is to the Constitution of the United States, no matter how late it may be that a violation is found to exist." 354 U.S. at 165. Where new issues are presented, legal theories are clarified, or facts are more fully developed, certiorari has been granted despite prior denials. *United States v. Sioux Nation*, 448 U.S. 371, 390-91 (1980); *Smith v. Yeager*, 393 U.S. 122, 123, n.1 (1968) (per curiam).

recovery upon a statute of nation-wide application. The court has clearly set forth the basis upon which it will determine which Indians are "members of the tribe" within the meaning of 25 U.S.C. § 407. That course is so clearly erroneous that certiorari should be granted "to prevent extraordinary inconvenience and embarrassment in the conduct of the cause," *American Construction Co. v. Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384 (1893). Thus review is appropriate now. See *Gay v. Ruff*, 292 U.S. 25, 30 (1934); *Spiller v. Atchison, Topeka & Santa Fe Ry.*, 253 U.S. 117, 121 (1920).<sup>11</sup>

The Government also suggests that the lower court may have lacked appellate jurisdiction, U.S. Resp. at 2, 8, n.6. The issue of appellate jurisdiction was squarely presented to the Court of Appeals and rejected by it. Section 403(a) of the Federal Court Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 57-58 directs that:

Any case pending before the Court of Claims on the effective date of this Act ... in which there is pending a request for review, and upon which the court has not acted, shall be transferred to the United States Court of Appeals for the Federal Circuit.

The Court of Appeals has generally read the statute to allow "interlocutory" appeals in cases such as *Short*, which were fully briefed on the effective date of the Federal Court Improvement Act, to be "transferred" and heard on the merits because the certification procedures were not in effect when the appeal was filed, e.g., *Airborne Data, Inc. v. United States*, 702 F.2d 1350, 1351, 1361 and n.23 (Fed. Cir. 1983); *Hardee v. United States*, 708 F.2d 661, 662-63 (Fed. Cir. 1983);

11. At present, the parties are slogging through the remaining proceedings: case-by-case determinations of the qualifications of the remaining plaintiffs and the calculation of damages. Some 205 motions for a summary determination of eligibility, involving the qualifications of some 422 plaintiffs, are now pending in the Claims Court. Discovery is under way. During the years of expensive, complex litigation which lie ahead, the bulk of the timber-sale proceeds of the Hoopa Valley Reservation will benefit neither the plaintiffs nor the Tribe, since most funds are sequestered, and the decision below will add little to the final posture of this case.

*Trans-Lux Corp. v. United States*, 696 F.2d 963, 964 (Fed. Cir. 1982); *El Paso Co. v. United States*, 694 F.2d 703, 705 (Fed. Cir. 1982). Although it is true that in other cases, e.g., *Aleut Tribe v. United States*, 702 F.2d 1015 (Fed. Cir. 1983), the court has read the Federal Court Improvement Act the other way, it makes more sense to conclude that when Congress authorized the "transfer" of pending Court of Claims appeals to the Court of Appeals, it did not contemplate that appeals would be dismissed for failure to comply with the certification procedures that were not applicable at the time the original appeals were filed and briefed. Obviously, this will apply only to a small class of transition period cases.<sup>12</sup> Most important, if the lower court lacked appellate jurisdiction, its opinion should be vacated, not allowed to stand. See *Liberty Mutual Ins. Co. v. Wetzel*, 424 U.S. 737 (1976); see also *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 206 (1956) (Harlan, J. concurring in part and dissenting in part).

## V. CONCLUSION

For the reasons set forth above the petition should be granted.

Respectfully Submitted,

/s/

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Attorney of Record for  
Hoopa Valley Indian Tribe

June 6, 1984

12. The recommended decision of the trial judge from which all parties requested review, and which led to the Court of Appeals' decision below, App. A, was plainly intended to be appealable and was briefed as such. It is true that the former trial judge, unfamiliar with the requirements of 28 U.S.C. § 1292(d), failed to include the necessary certification although the decision was technically interlocutory. Judge Schwartz retired two days after ordering entry of a judgment in exactly the form directed by the Court of Appeals. App. 280, *infra*. Now, however, judges of the Claims Court are clearly subject to the certification procedure; there is no reason to impose hardship on the parties whose cases are among the few affected by the transition provisions of the Federal Court Improvement Act.

# **Appendix**

**United States Court of Appeals for the Federal Circuit**

IN THE MATTER OF CASES )  
TRANSFERRED TO THIS COURT )  
PURSUANT TO PUBLIC LAW )  
97-164, Sec. 403 )

Before MARKEY, Chief Judge, FRIEDMAN, RICH, DAVIS, BALDWIN, KASHIWA, BENNETT, MILLER, SMITH and NIES, Circuit Judges.

**O R D E R**

The court having considered the matter of cases pending in the Court of Claims and transferred to this court on 1 October 1982 pursuant to Public Law 97-164, Sec. 403, in each of which cases a decision and opinion had been recommended to the judges of the Court of Claims, IT IS HEREBY ORDERED:

That the United States Claims Court enter and transmit to this court as soon as possible a judgment corresponding to the decision recommended in each such case, which judgment will be deemed to be on appeal to this court.

**FOR THE COURT**

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4 - Oct 82

Date

---

/s/ Howard T. Markey

Howard T. Markey,  
Chief Judge

United States Claims Court

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JESSIE SHORT et al.

v.

NO. 102-63

THE UNITED STATES

O R D E R

Pursuant to the order of the United States Court of Appeals for the Federal Circuit, issued October 4, 1982, IT IS ORDERED that judgment is to be entered in accordance with my report, filed March 31, 1982, recommending a decision to the judges of the United States Court of Claims.

/s/ David Schwartz, Judge  
David Schwartz, Judge

J U D G M E N T

Pursuant to the above and Rule 58, IT IS ORDERED AND ADJUDGED that judgment is entered this date in this case as provided above.

OCT 6 1982

/s/ Frank T. Peartree  
Frank T. Peartree, Clerk

MOTION FILED  
APR 29 1984

No. 83-1555

In The  
**SUPREME COURT of the UNITED STATES**

October Term, 1983

HOOPA VALLEY TRIBE OF INDIANS,  
*Petitioner.*

v.

JESSIE SHORT, et al.,  
*Respondents.*

MOTION OF TIMBER RESOURCE TRIBES  
AND OTHER TRIBES FOR LEAVE TO FILE A BRIEF AS  
AMICI CURIAE IN SUPPORT OF PETITIONER HOOPA  
VALLEY TRIBE OF INDIANS FOR WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

AND

BRIEF OF AMICI CURIAE, TIMBER RESOURCE TRIBES  
AND OTHER TRIBES IN SUPPORT OF PETITIONER  
HOOPA VALLEY TRIBE OF INDIANS FOR  
WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

IN SUPPORT OF REVERSAL  
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**INDIAN TRIBES COMPRISING AMICI CURIAE**

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Tahlequah, OK 74464

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Tribal Headquarters  
Plummer, ID 83851

Hualapai Tribe of Indians  
Post Office Box 168  
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Kalispel Indian Community of The Kalispel Reservation  
Tribal Headquarters  
Usk, WA 99180

Keweenaw Bay Indian Community of L'anse Reservation  
Baraga, MI 49908

Kootenai Tribe of Idaho  
Post Office Box 1138  
Bonner's Ferry, ID 83805

Lummi Indian Business Council  
2616 Kwina Road  
Bellingham, WA 98226

Makah Indian Tribe  
Post Office Box 115  
Neah Bay, WA 98357

Mescalero Apache Tribe  
Mescalero, NM 88340

Metlakatla Indian Community  
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Metlakatla, AK 99926

Mille Lacs Band of Chippewa Indians  
Star Route, Box 194  
Vineland, MN 56359

Oglala Sioux Tribe  
Box 468  
Pine Ridge, SD 57770

Puyallup Tribe of Indians  
2002 East 28th Street  
Tacoma, WA 98404

Red Lake Band of Chippewa Indians  
Red Lake Reservation  
Red Lake, MN 56661

Santa Clara Indian Pueblo  
Post Office Box 850  
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Spokane Indian Tribe  
Tribal Headquarters  
Wellpinit, WA 99040

The T. lalip Tribes  
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Confederated Tribes of the Umatilla Indian Reservation  
Post Office Box 638  
Pendleton, OR 97801

Confederated Tribes of the Warm Springs Reservation  
Post Office Box C  
Warm Springs, OR 97761

**MOTION FOR LEAVE TO FILE BRIEF  
AS *AMICI CURIAE***

Pursuant to Rule 42.3 of the Rules of this Court, the above enumerated recognized Indian tribes respectfully move the Court for leave to file a brief as *Amici Curiae* in support of the Petition of the Hoopa Valley Tribe of Indians (No. 83-1555, filed by mailing on March 3, 1984) for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit. Consent for the filing of this brief was denied by Respondents.

**INTEREST OF *AMICI CURIAE***

The *Amici* enumerated above are all federally recognized Indian tribes, most of whose reservations have commercial timber resources. Many of the reservations of these tribes have other commercial resources such as fish, hard minerals, oil and gas. The tribes depend on the sale of these resources to support the exercise of their powers of self-government as distinct, political entities.

Because the parties herein must concentrate their attention on the immediate facts and effects of the case on themselves, the *Amici* urge that they cannot adequately explicate the issues regarding the definition of "Indian Tribe" and the proper role of a recognized tribal governing body in the government-to-government relationship with the United States. Nor can they adequately present the issue of who legally qualifies as an Indian under older federal statutes giving Indians special benefits and services. While recognizing that a Motion for Leave to File an *Amicus Curiae* brief when consent has been refused is not favored, Sup.Ct. Rule 36.1, the *Amici* urge that the issues raised are of such magnitude to all federally recognized tribal governing bodies that the interests of the individual Respondents herein are transcended.

## CONCLUSION

For the reasons set forth above, and in the interest of justice, the *Amici Curiae* respectfully request that the Court grant this motion.

RESPECTFULLY SUBMITTED,

DALE H. ITSCHNER  
Attorney for *Amici Curiae*

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**BRIEF OF AMICI CURIAE, TIMBER RESOURCE TRIBES  
AND OTHER TRIBES IN SUPPORT OF PETITIONER  
HOOPA VALLEY TRIBE OF INDIANS FOR  
WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

I.

**STATEMENT OF INTEREST OF  
AMICI CURIAE**

The interest of *Amicus Curiae* is set out in the Motion for Leave to File, *supra*.

II.

**THE QUESTION PRESENTED**

Whether the terms "Indian" and "Tribe" have consistent, definite meanings when used in federal legislation enacted for the benefit of these undividuals or groups and the legislation itself does not define the terms.

## III.

## ARGUMENT

A. THIS COURT SHOULD GRANT THE WRIT SO AS TO RESOLVE DEFINITIVELY THE QUESTIONS WHAT IS A "TRIBE" AND WHAT IS AN "INDIAN" IN A LEGAL SENSE.

After approximately 150 years of use of the terms "Tribe" and "Indian" in federal statutes, it would seem reasonable that the definition of those terms in the statutes would be well settled. Apparently, not so; at least that is what the Court of Appeals below found in holding "The word 'tribe' (as related to Indians) has no fixed, precise or definite meaning . . ." The court went on to find that with respect to the Hoopa Valley Reservation the term "Tribe" included "Indians residing on one reservation." (Hoopa App. 7) While it extracted the language "Indians residing on one reservation" from the Indian Reorganization Act of 1934, 25 U.S.C. § 479, as an appropriate definition of "tribe," the court then ignored the definition of "Indian" in § 479; that definition requires: (a) membership in a recognized tribe; (b) a member's descendant who was a reservation resident on June 1, 1934; or (c) others of one-half or more Indian blood. Instead the court below created a new definition by adopting a standard of allotment, assignment or one-quarter Indian blood. (Hoopa App. 21, 22.)

Many earlier statutes, including 25 U.S.C. § 407, use the terms "Tribe" and "Indian" without definition. In recent years, however, Congress has taken to defining these terms for purposes of particular Indian legislation, *see e.g.*, The Indian Child Welfare Act of 1978, 25 U.S.C. § 1903, The Indian Self Determination and Educational Assistance Act of 1975, 25 U.S.C. § 450b, and The Indian Civil Rights Act of 1968, 25 U.S.C. § 1301. The common element in such definitions of "Tribe" is the factor of federal recognition—a tribe is an entity recognized as possessing powers of self-government, *see e.g.*,

25 U.S.C. §1301(1), or an Indian group recognized as being eligible for special programs and services because of their status, *see e.g.*, 25 U.S.C. § 450b(b).

As more fully set forth below, it is *Amici*'s position that to constitute an Indian tribe in the legal sense, an entity must, among other things, be recognized by the United States as a distinct political entity possessing powers of self government and eligibility for special programs and services. This position appears to coincide with present administration policy, as evidenced by the Federal Acknowledgment Project reflected in Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 C.F.R. §83. This process was adopted to give an historic tribal group with a common ethnological background of Indian ancestry, that has historically met the necessary criteria to constitute an Indian tribe, the opportunity to obtain recognition as a tribal governmental entity for purposes of gaining legal status as a tribe and thus eligibility for the various special services and benefits enjoyed by Indians. *See* 25 C.F.R. §83.3; Hoopa App. 154-55.

Also, as argued *infra*, it is the position of *Amici* that to be an "Indian" in a legal sense one must be a member of a federally recognized tribe. This membership requirement seems fairly constant in recent legislation, *see e.g.*, Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(3); Self Determination and Educational Assistance Act of 1974, 24 U.S.C. § 450b(a); and Indian Financing Act of 1974, 25 U.S.C. § 1452(b).

While in an ethnological sense, many of the Respondents may be classified as "Indians," nevertheless in the legal sense of eligibility for the special benefits and services accorded Indians, Respondents below do not qualify. Respondents had the opportunity to obtain federal recognition as a tribe, both in 1934, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §476, and more recently through regulations of the Department of the Interior specifically on behalf of the Yuroks of the Hoopa Valley Reservation, 25 C.F.R. §84 (1979). If Respondents are not willing to undertake the burdens of being Indians in the political and social sense, they should not now seek benefits solely on the basis of an accident of birth.

B. THE COURT OF APPEALS ERRS IN HOLDING THE TERMS "TRIBE" TO HAVE NO DEFINITE, FIXED MEANING WHEN USED IN 25 U.S.C. § 407.

In its decision below, the Court of Appeals states: "[I]t is clear to us that Congress, when it used the term 'tribe' in this instance [referring to the adoption of 25 U.S.C. § 407] meant only the general Indian groups communally concerned with the proceeds—not an officially organized or recognized Indian tribe—and that the qualified plaintiffs fall into the group intended by Congress." (Parenthetical added). The court further stated: "The word 'tribe' (as related to Indians) has no fixed, precise or definite meaning but can appropriately include 'Indians residing on one reservation.'" (*Hoopa* App. 7.) This holding jeopardizes contemporary Federal policy "fostering Tribal self government and economic development." *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 155 (1980).

Almost from the beginning of our republic, this Court has recognized Indian Tribes as distinct, political entities, *see e.g.*, *Worcester v. Georgia*, 6 Pet. 515 (1832). Their unique status has been recognized by the Executive and Legislative branches of our government through the treaty-making process and numerous Acts of Congress.

In support of its position that the term "Tribe" has no fixed meaning, the Court of Appeals cites the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 461, *et seq.* First it should be noted that this statute was designed to reorganize separate groups of Indians into tribes with recognized tribal governing bodies. For example, The Confederated Tribes of Warm Springs Reservation, presently a single governmental entity, comprises what were historically separate bands and groups of Indians. Secondly, one of the major purposes of Section 16 of the Act, codified at 25 U.S.C. § 476, was to give an Indian reservation an organized form of government that could be dealt with on a government-to-government basis by the United States. As history demonstrates, once a group of Indians formed a tribe and acquired federal recognition pur-

suant to the I.R.A. it became a tribe for all legal purposes and remains so.

An underlying premise for the operation of §476 was the notion that a "reorganized" tribe comprised only "Indians" and thus Congress found it necessary to define "Indian" in §479 as including members of recognized tribes, their descendants who are residing within the present boundaries of a Reservation and all other persons of one-half or more Indian blood. With this definition, Congress' scheme was complete.

As argued *infra*, to be an Indian in the legal sense at present requires membership in a recognized tribal entity. A prime sovereign power of an Indian tribe is the power to determine its own membership by its own law and to enforce that law in its own courts. The Supreme Court has recognized that subjecting tribal membership decisions to the scrutiny of a federal court forum undermines tribal court authority and infringes on the right of tribal self-government. Because Congress has left the sovereign tribal power of determining membership intact, the federal courts have no jurisdiction to intrude on tribal membership determinations. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). As the Supreme Court held in *Santa Clara*, regarding questions of membership, "Given the often vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create causes of action that would intrude on these delicate matters." 436 U.S. at 72, n.32. In the instant case the holding of the court below essentially redetermines the membership of the Hoopa Valley Tribe and the Yurok Tribe or a newly-created unnamed tribe. None of these alternatives can be legally justified.

As recently as 1982, this Court, in concluding that an Indian tribe retained its sovereign power to tax non-members doing business on Reservation lands, strongly emphasized the traditional role of Indian tribes as sovereign governments providing "essential services" and "the advantages of a civilized society" inside their reservations. The Court also underscored the need for tribal revenues to carry out those essential governmental functions, *Merrion v. Jicarilla Apache Tribe*, 455 U.S.

310 (1982). If allowed to stand the decision below threatens the ability of recognized tribal governments to provide these essential services. Because of the vagaries of federal economic assistance to Indian tribes, the rents and profits of tribal property have been the only secure, self-sufficient financial base for tribal governments.

The Bureau of Indian Affairs, the agency charged with the administration of Indian matters and whose interpretation is entitled to "great weight" and not to be overturned unless clearly wrong, *United States v. Jackson*, 280 U.S. 183, 193 (1930), has consistently construed § 407 to mean that unallotted timber funds are collected for the sole use of federally recognized tribal governments and their enrolled members. This construction is correct because it is founded upon the political relationship between the United States and Indian tribes as separate, distinct quasi-sovereigns spelled out by the decisions of this Court.

This Court has long recognized that determination of the existence of a tribe is a matter for the other branches of government. In *United States v. Holliday*, 3 Wall. 407 (1865), this Court held that federal liquor laws were applicable to a sale of liquor to a Michigan Chippewa Indian despite a treaty provision looking to the dissolution of the tribe for the reason that the Interior Department regarded the tribe as still existing. The Court declared:

In reference to all matters of this kind, it is the rule of this court to follow the act of the executive and other political departments of the government, whose more special duty it is to determine such affairs. If by them those Indians are recognized as a tribe, this court must do the same. (3 Wall. at 419)

*See also, United States v. Rickert*, 188 U.S. 432 (1903); *United States v. 43 Gallons of Whiskey*, 93 U.S. 188 (1876). The converse should also be true; legal existence of an Indian Tribe requires, among other things, recognition as such by the Interior Department.

The decisions of the Court of Appeals would also vitiate the United States' proper fulfillment of its trust responsibility

which requires allowing Indians greater control of their own destinies, *Morton v. Mancari*, 417 U.S. 535 (1974). Self-determination can only be accomplished through recognized tribal governing bodies. In *Morton*, this Court sustained the B.I.A.'s Indian hiring preference on the basis that it was not granted to a discrete racial group, but rather to Indians as members of quasi-sovereign tribal entities, 417 U.S. at 554. The Court of Appeals would now bestow special benefits on a purely racial basis without regard to the nexus of tribal membership, a bestowal which may not pass constitutional muster.

While the Court of Appeals goes to great lengths to state that its opinion is limited to the facts in the case before it, nothing prevents other claimants to tribal resources from employing the identical reasoning and effectively hamstringing tribal governments in the performance of their governmental functions through litigation. Federal courts have consistently held that, absent allotment, reservation property is tribal property in which individual Indians have no separate interest, *Cherokee Nation v. Journey cake*, 155 U.S. 196, 207 (1894); *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 307 (1902); *Prairie Band of Patawotomi Indians v. United States*, 143 Ct. Cl. 131, 143 (1958) cert. denied, 359 U.S. 908 (1959). The decision as to how best to utilize the proceeds from the sale of tribal resources is a decision made in the first instance by recognized tribal governments in exercising "control of their own destinies" subject to the approval of the Secretary of the Interior as required by 25 U.S.C. § 407.

While some tribes choose to make per capita distributions of timber proceeds, others, such as Navajo, do not. As a practical matter, the Court of Appeals' decision makes unworkable any approach which earmarks the money to fund tribal programs inasmuch as the Respondents below, or anyone similarly situated elsewhere, have no interest in tribal programs.

C. THE COURT OF APPEALS ERRS IN HOLDING THAT ONE MAY BE AN "INDIAN" AND THEREBY ELIGIBLE TO SHARE IN THE DISTRIBUTION OF RESERVATION RESOURCES WITHOUT BEING A MEMBER OF A FEDERALLY RECOGNIZED INDIAN TRIBE.

The Court of Appeals found that each so-called qualified plaintiff is entitled to recover his aliquot share of the proceeds from the sale of reservation timber, deciding that all such qualified Plaintiffs are "Indians of the Reservation." (Hoopa App. 7) *Amici* contend that the only proper way to determine who is an "Indian" is by the litmus test of tribal membership. As stated in the foremost treatise on Indian law, F. Cohen, *Handbook of Federal Indian Law* 2 (1942):

The term "Indian" may be used in an ethnological or in a legal sense. Ethnologically, the Indian race may be distinguished from the Caucasian, Negro, Mongolian, and other races. If a person is three-fourths Caucasian and one-fourth Indian, it is absurd, from the ethnological standpoint, to assign him to the Indian race. Yet legally such a person may be an Indian. From a legal standpoint, then, the biological question of race is generally pertinent, but not conclusive. Legal status depends not only upon biological, but also upon social factors such as the relation of the individual concerned to a white or Indian community . . . All these social or political factors may affect the classification of an individual as an "Indian" or a "non-Indian" for legal purposes, or for certain legal purposes.

It is the term "Indian" in the legal sense with which we are concerned. The social and political factors of which Cohen spoke in 1942 are today reflected in part by an individual's identifying himself as an Indian, but more significantly by an Indian tribe's acceptance of the individual as an Indian through tribal membership. The mere claim of Indian ancestry is not

enough to accord an individual the special benefits provided by the Federal Government to Indians. As stated in Getches, Rosenfeldt and Wilkinson, *Federal Indian Law* 6 (West 1979), in discussing the self-identification approach in census reports on total Indian population: "Finally, the self-identification approach permits persons to identify as Indians in those years when it is profitable, fashionable, or simply self-fulfilling to do so." The decision of the Court of Appeals below, if allowed to stand, creates the intolerable circumstance of permitting an individual to claim a share of tribal revenues derived from the sale of valuable reservation resources (and perhaps, from other sources) without assuming the corresponding obligation of tribal membership. Such a bizarre concept of rights without corresponding responsibilities is anathema to the entirety of the correlative concepts of "Tribe" and "Indian" embodied in the scheme of federal Indian law.

As demonstrated above, recent Federal legislation regarding Indians generally defines the term "Indian" as requiring tribal membership. In an earlier, simpler time it was relatively easy to determine who was an Indian in the social and legal sense, but with the passage of time and numerous Indian termination acts (e.g., 25 U.S.C. §§ 691, *et seq.*, regarding Western Oregon Indians), and because of intermarriage and other factors, the only valid test today is membership in a federally recognized tribe—not just when it seems profitable to claim to be an Indian.

With reference to Indian legislation, this Court has repeatedly emphasized that contemporary policies should guide the Federal Courts when interpreting federal statutes, regulations and executive orders, *e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 29, 55-56 (1978); *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Bryan v. Itasca County*, 426 U.S. 373, 389 (1976). Clearly contemporary policy requires that the term "Indian," when used in statutory construction, denote only an enrolled member of a federally recognized tribe.

While much is made in federal Indian law of the trust responsibility owed by the United States to Indians, it must not be overlooked that Indian tribal leaders also have a trust respon-

sibility to be faithful to their constituents, *see e.g., Seminole Nation v. United States*, 316 U.S. 286 (1942). Included in this responsibility is proper determination of membership and therefore eligibility for various federal and tribally provided services. Acceptance into tribal membership is also the best way to demonstrate the social acceptance factor stressed by Felix Cohen.

#### CONCLUSION

For the reasons set forth herein, the Writ of Certiorari to the United States Court of Appeals for the Federal Circuit should be granted.

RESPECTFULLY SUBMITTED,

DALE H. ITSCHNER  
Attorney for *Amici Curiae*